

Chairman's Corner

by Robert E. McHenry, CPCU, AIC, AIS



■ **Robert E. McHenry, CPCU, AIC, AIS,** is a claims specialist 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 Interest Group Committee.

Mele Kalikimaka (Hawaiian for Merry Christmas). Wow, what a great location for the CPCU Society's Annual Meeting and Seminars! According to the local news sources, the convention was the second largest ever held in Honolulu. It was expected that up to \$35 million would go into the local economy. Note that the largest convention ever in Hawaii was the 1995 CPCU Society convention.

The Claims Interest Group met on Saturday, September 8, and we had a full agenda. First and foremost, welcome to new committee members **Karen Hope, CPCU**, of State Farm in Baton Rouge, Louisiana, and **Robert Riccobono, CPCU**, of Rockville Risk

Management Associates in Franklin Square, New York. Aloha to **John A. Giknis, CPCU**, whose final term expired at the end of the Annual Meeting and Seminars. Giknis was a fixture on the subcommittee planning our interest group luncheon or breakfast meeting. He has been recruited for a sub-task force working on the Interest Group Resource and Governance changes. Good luck to Karen, Robert, and John.

Earlier this year, each interest group was asked to prepare a SWOT (strengths, weaknesses, opportunities, and threats) analysis. A great deal of our meeting

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was spent completing this task. Please visit the web site for the final version of this analysis, our 2006–2007 Circle of Excellence submission, and minutes from the meeting.

The Interest Group Resource and Governance task force (IGRG) asked for volunteers from all interest groups. There are multiple sub-task forces that are being formed. The work of these task forces will be to reshape (possibly combine) and provide centralized resources and “economies of scale” to all interest groups. This is a challenging endeavor and allows for many people to participate in Society service. Please consider joining one of the sub-task forces. There have been several articles published in the recent issues of *Claims Quarterly* written by **Kathleen J. Robison, CPCU**. Please refer to these writings for more information.

This was the first year that “Gold with Distinction” was awarded to an interest group. Claims was one of only two interest groups to receive this recognition along with Loss Control. The judges felt that these submissions were so superior that special recognition was due. Thanks to all of you who contributed to the programs in our submission, and thanks to our Circle of Excellence Committee members **Barbara Wolf Levine, J.D., CPCU**, **Eric J. Sieber, CPCU**, and **Ray A. Rose, CPCU**. Please note that your efforts benefit the interest group, your local chapter, the CPCU Society, and the general public. Keep up the great work!

The theme for 2008 Annual Meeting and Seminars is “CPCU: Heritage and Horizons.” We are planning three educational seminars for the Philadelphia meeting. We will be partnering with the CLEW Interest Group on the Mock Trial, which has become one of the best-received presentations of every Annual Meeting. Will Foxy Contretemps resurface in another capacity? **Cecilia T. Foy-Dorsett, CPCU**, **John Rodney Caudill, CPCU**, and **Elise M. Farnham, CPCU, CPIW**, are working on a program entitled “Ethics and Diversity.”



Chairman Robert E. McHenry, CPCU, (second from left) and Cecelia T. Foy-Dorsett, CPCU, (center) represented the Claims Interest Group at the Circle of Excellence Luncheon held during the 2007 Annual Meeting and Seminars. Also pictured are CPCU Society Executive Vice President James R. Marks, CAE, CPCU, AIM, (far left), Loss Control Interest Group Chairman Debra L. Dettmer, CPCU, (second from right), and 2006–2007 Society President Betsey L. Brewer, CPCU (far right).

Barbara J. Keefer, J.D., CPCU, and **Andrew L. Zagrzejewski, CPCU, CLU, ChFC**, will present on the topic of E&O insurance coverage overview. We also tabled two additional sessions including “Investigation for Dummies” and “E-Discovery,” which will be considered for the 2009 Annual Meeting and Seminars.

As the Claims Interest Group chairman, I challenged each committee member, and now each of you reading this page, to write an article for the *Claims Quarterly* and contribute to the Circle of Excellence. Also, each committee member has a “job” to do for our interest group.

Finally, we discussed succession planning from the chairman through the subcommittees. Nominations were opened for the chairman; each new committee member assumed a duty, and the standing committees were also strengthened. **Kenneth R. Hoke, CPCU**, is heading a subcommittee to help balance our commercial and personal lines focus.

Aloha, and if you have any questions or comments please contact me by e-mail at Robertmchenry@westfieldgrp.com. ■

“Behold the turtle. He makes progress only when he sticks his neck out.”

—James Bryant Conant

Claims Interest Group Wins Circle of Excellence “Gold with Distinction”

by Barbara W. Levine, J.D., CPCU



The Circle of Excellence (COE) recognition program is an award program that provides recognition to the CPCU Society's interest groups and chapters all over the country. The program has traditionally awarded three levels of recognition: Bronze, Silver, and Gold. This past year the COE Committee added a new category of recognition, “Gold with Distinction.”

Each of the Society's interest groups and chapters are responsible for their COE submission. The Claims Interest Group has a standing “COE” Committee comprised of three members. It is the committee's job to put the submission together from the individual submissions made by its member throughout the COE reporting period, June 1 to May 31 of each year.

Claims Interest Group members are encouraged to report their qualifying activities as they are completed throughout the COE tracking period via the Claims Interest Group web page, found at <http://claims.cpcusociety.org>. Our online COE form is easy to complete, and we welcome reports of all activities by our members.

Activities that may be included in the COE program award include:

- Conduct, create, or participate in workshop, symposium, forum, or other educational event; for employer, chapter, or industry organization, or non-industry-related event.

- Write and publish articles and research papers, in both CPCU and non-industry-related publications, including newsletters, magazines, and web sites.
- Attend CPCU annual and semi-annual meetings: conduct seminars, staff Interest Group Booth or New Designee Open House.
- Serve as officer for local chapter, conduct CPCU chapter meeting, workshop, or turnkey program.
- Teach a class: CPCU, ARM, AICPA, IIA, or adjuster continuing education programs.
- Participate or create a member outreach program for the CPCU Society or a local chapter.
- Participate in I-Day and other industry events: as a speaker, volunteer to serve as part of a panel, or assist in preparing and hosting the event.
- Sponsor or mentor a new designee, or a new member program or event.
- Create or participate in Ethics Awareness events.
- Serve as a CPCU Society Champion.
- Contribute to interest group web site.
- Engage in community service projects in conjunction with other industry or non-industry groups.

Any creative activity that promotes the values of the CPCU Society will be counted. If you are not sure whether an activity qualifies, submit it.

For the COE Recognition Program of 2007, the Claims Interest Group had the honor of receiving the newest and highest level of recognition: “Gold with Distinction.” The 2007 Annual Meeting and Seminars marks the first time this level of distinction was awarded. This prestigious award level is a true testament to the level of commitment and professionalism of the individuals who make up the Claims Interest Group.

The Claims Interest Group began a tradition in 2006 of awarding a “COE Most Valuable Player” of the year. The award is based upon the member's submission of activities; both the number and the value of the activities are considered. There are many members of our interest group who deserve to be recognized, but the award can go to only one person. This year's 2007 COE MVP was **Andrew L. Zagrzejewski, CPCU, CLU, ChFC**. Congratulations, Andrew!

To gain a better understanding of the COE Recognition Program, log onto the Claims Interest Group web page at <http://claims.cpcusociety.org>. You will see an icon for COE. To submit your activity, just open the link and make a note of the details requested. It takes only a few minutes, and all submissions are valuable to us. ■



Andrew L. Zagrzejewski, CPCU, CLU, ChFC, (left) received the “2007 Circle of Excellence Most Valuable Player” at the Claims Interest Group Breakfast during the 2007 Annual Meeting and Seminars from Claims Interest Group Chairman Robert E. McHenry, CPCU.

Property Insurance Litigation Arising from Hurricane Katrina: The Battle Moves to the Appellate Courts

by Wystan M. Ackerman, Esq.; Gregory P. Varga, Esq.; and Daniel F. Sullivan, Esq.



■ **Wystan M. Ackerman, Esq.**



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In the December 2005 edition of *Claims Quarterly*, the authors provided an overview of the most significant property insurance coverage lawsuits spawned by Hurricane Katrina. Over the past two years, those lawsuits have worked their way through the trial court system and appeared on the appellate stage. In 2007, the state and federal appellate courts in Louisiana and Mississippi issued decisions that have had and will continue to have a dramatic—and in most instances favorable—impact on the property insurance industry. This article provides an in-depth look at several of these cases.

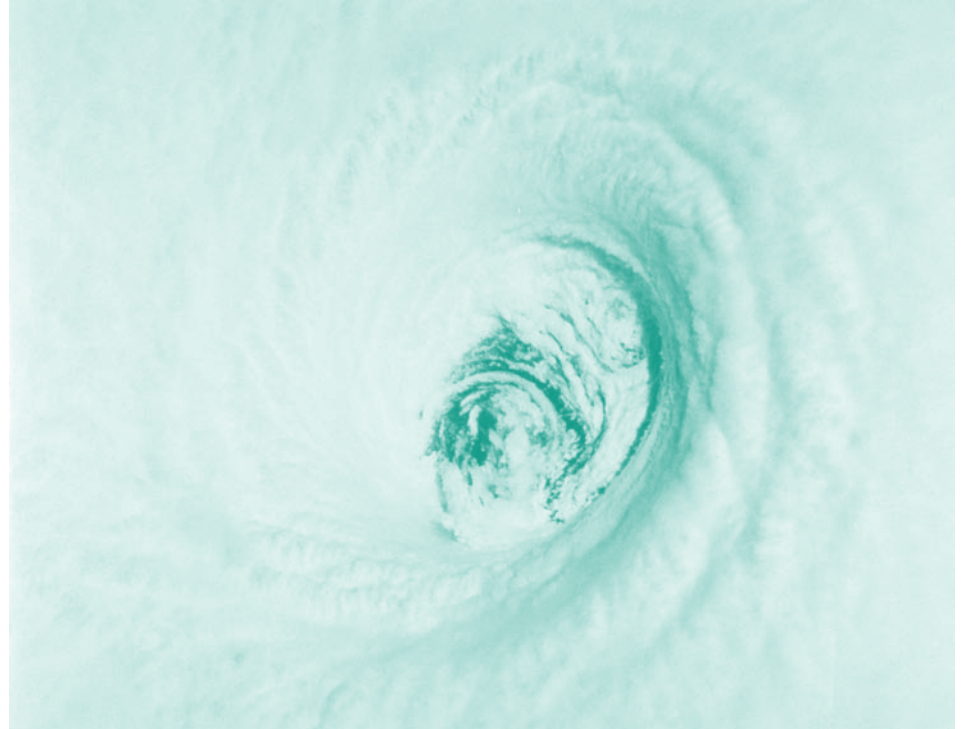
Over the last year, several of the major coverage cases arising from Hurricane Katrina have reached the U.S. Court of Appeals for the Fifth Circuit, which hears appeals from federal district courts in Texas, Louisiana, and Mississippi. The Fifth Circuit heard several Hurricane Katrina cases on an expedited basis and issued three important rulings, all of which were favorable to the insurance industry. Litigation on some of the same issues has also been proceeding simultaneously, although more slowly, through the Louisiana state court system. One important decision has been issued by a Louisiana court of appeal, and another important ruling is expected soon. Because questions of insurance policy interpretation and statutory interpretation are questions of state law, the Louisiana and Mississippi Supreme Courts will ultimately have the last word on these critical insurance coverage issues.

On November 27, 2006, Judge Stanwood R. Duval Jr. of the U.S. District Court for the Eastern District of Louisiana issued a decision on water damage exclusions that sent shockwaves through the property insurance industry until it was later overturned by the court of appeals in August 2007. Judge Duval was assigned to hear all of the lawsuits in

the New Orleans federal court in which policyholders sought to recover for water damage resulting from the levee breaches that occurred at the time of Hurricane Katrina. The cases assigned to Judge Duval are known as *In re Katrina Canal Breaches Consolidated Litigation*,¹ and include class actions as well as individual suits brought by homeowners and commercial policyholders. In the *Katrina Canal Breaches* litigation, attorneys for policyholders alleged that the levees in New Orleans were negligently designed, constructed, and maintained and, therefore, that the flooding was “man-made,” not “natural.” They argued that insurers’ water damage exclusions were ambiguous and that the term “flood” could and should be read as limited to a “natural” event. They relied heavily on cases in which courts had previously found that a water main break was not a “flood,” as well as court decisions finding earth movement exclusions to be ambiguous and limiting the term “earth movement” to a “natural” event. The insurers countered that, under Louisiana law, “flood” must be given its plain, ordinary common-sense meaning, and that everyone would consider what happened in New Orleans to be a “flood.” The insurers also cited numerous cases in which courts had applied water damage exclusions to floods caused by the failure of levees, dams, and dikes.

The federal district court ruled that some carriers’ exclusions were ambiguous and other carriers’ exclusions were unambiguous. The court concluded that the water damage exclusion in the “HO-3 Form,” which is drafted by the Insurance Services Office, Inc. and is the principal homeowners’ insurance coverage form used by many carriers, was ambiguous. The court reasoned that “because the policies are all-risk, and because ‘flood’ has numerous [dictionary] definitions, it reasonably could be limited to natural occurrences.” The

court focused on dictionary definitions that used the word “overflow” in some of the definitions of “flood.” The court concluded that the word “overflow” was limited to an “overtopping” of a bank of a body of water, and ruled that “‘flood’ in the ISO Water Exclusion context simply means ‘flood’ caused by natural occurrences such as overtopping.” The court also concluded that the other causes of loss excluded in the ISO water damage exclusion (“surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind”) were limited to “natural” events and, therefore, that the word “flood” must similarly be limited to a “natural” event. The court also relied on the water main break cases and earth movement cases that the policyholders had relied on. The court recognized that the ISO water damage exclusion had an anti-concurrent cause preamble providing that “We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.” The court ruled that this language was inapplicable because “there is no ‘separate’ or other cause of damage”— “[t]his case does not present a combination of forces that caused damage such as wind versus water” The court found Allstate’s water damage exclusion ambiguous for substantially the same reasons that it found the ISO exclusion ambiguous. State Farm’s exclusion, however, was found to be unambiguous because the lead-in language used by State Farm specifies that “We do not insure for such loss regardless of: (a) the cause of the excluded event” The court concluded that this language meant that loss caused by “flood” was excluded regardless of what caused the flood. The court also ruled that The Hartford’s policy language was unambiguous because an endorsement in The Hartford’s policies specifically excluded “ACTS, ERRORS,



OR OMISSIONS by you or others in: . . . The design, specifications, workmanship, repair, construction, renovation, remodeling, grading or compaction of all or any part of the following: . . . levees, dams, or other facilities”

The insurers using the ISO language appealed the district court’s decision to the Fifth Circuit, and the policyholders also appealed the ruling on State Farm’s policy language (they did not appeal from the ruling in favor of The Hartford). On August 2, 2007, a three-judge panel of the Fifth Circuit issued a unanimous decision in *In re Katrina Canal Breaches Litigation*,² which overturned the federal district court’s decision. The court of appeals rejected the policyholders’ request that the question be certified to the Louisiana Supreme Court because it found that the applicable principles of Louisiana law were clear. The court ruled that all of the “flood” exclusions were clear and unambiguous as applied to the massive inundation of New Orleans.

The court stressed that “what occurred here fits squarely within the generally prevailing meaning of the term ‘flood.’” It explained that “[w]hen a body of water overflows its normal boundaries and inundates an area of land that is normally dry, the event is a flood,” and “[t]his is precisely what occurred in New Orleans in the aftermath of Hurricane Katrina.” The court further concluded that the fact that “a levee’s failure is due to its negligent design, construction, or maintenance does not change the character of the water escaping through the levee’s breach; the waters are still floodwaters, and the result is a flood.”

In reaching these conclusions, the court of appeals examined numerous definitions of “flood” in dictionaries, treatises, and encyclopedias, and found that none of them made a distinction between “natural” and “non-natural” inundations. The court explained that the cases involving water main breaks were

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inapplicable because a water main is not a body of water, and the volume of water released is not typically the kind of large-scale “inundation” or “deluge” that would constitute a “flood.” The court also found the earth movement cases inapplicable, principally because the phrase “earth movement,” unlike “flood,” is not a word that is in everyday usage. The court rejected the argument that all of the different types of causes of loss excluded in the water damage exclusion should be limited to “natural” events, noting that several of them had been applied to both “natural” and “non-natural” events. The court also found that the allegation that the flooding in New Orleans was “non-natural” was highly questionable given that the “natural” forces of Hurricane Katrina were undoubtedly a substantial factor in causing the flooding. The court noted that “any natural event could be recharacterized as non-natural either because man’s preventative measures were inadequate or because man failed to take preventative measures at all,” and that “[b]ecause levees are man-made, one could point to man’s influence nearly any time a levee fails.” The court also concluded that the efficient proximate cause doctrine and anti-concurrent cause clause were inapplicable because “there are not two independent causes of the plaintiffs’ damages at play; the only force that damaged the plaintiffs’ properties was flood,” and “[t]o the extent that negligent design, construction, or maintenance of the levees contributed to the plaintiffs’ losses, it was only one factor in bringing about the flood; the peril of negligence did not act, apart from flood, to bring about damage to the insureds’ properties.”

The same issue has been litigated in the Louisiana state courts in *Sher v Lafayette Insurance Company*. In *Sher*, a state trial court judge in New Orleans issued a one-sentence decision granting summary judgment in favor of a policyholder on the ground that the “flood” exclusion was ambiguous. The insurer appealed to the Louisiana Fourth Circuit Court of Appeal. A five-judge panel of the

court of appeal heard oral arguments on September 12, 2007. The court has not yet issued a decision. The *Sher* case also involves the question of whether the commercial property insurer is entitled to a credit for flood insurance payments if the “flood” exclusion is unenforceable, and the question of whether an amendment to the Louisiana bad-faith statutes doubling the penalty for certain bad-faith conduct, which was enacted after Katrina, can be applied retroactively. Regardless of how the court of appeal rules in *Sher*, it is expected that the losing party will seek further appellate review in the Louisiana Supreme Court.

In the litigation involving the Louisiana Valued Policy Law, decisions were issued by both federal and state appellate courts in August 2007. In *Chauvin v State Farm Fire & Casualty Company*,³ policyholders brought purported class-action lawsuits in New Orleans Federal Court against numerous insurers, claiming that the insurers had violated the Valued Policy Law. In essence, the policyholders sought to use the Valued Policy Law as a backdoor mechanism for obtaining coverage for flood damage under homeowners’ policies. The Valued Policy Law provides, in pertinent part, that “in the case of total loss the insurer shall compute and

indemnify or compensate any covered loss of, or damage to, such property which occurs during the term of the policy at such valuation” The policyholders argued that this language requires an insurer to pay the policy limit if a home was a total loss as a result of both wind and flood damage, as long as there was any covered wind damage, no matter how small. They relied heavily on *Mierzwa v Florida Windstorm Underwriting Association*,⁴ in which a Florida court of appeals had interpreted that state’s valued policy law as requiring payment of the policy limit whenever there was a total loss, as long as any part of the loss was covered.

The Federal District Court rejected the policyholders’ argument and dismissed the suits. The policyholders then appealed to the Fifth Circuit, which issued a decision on August 6, 2007, unanimously upholding the trial court’s ruling. The court of appeals held that the Valued Policy Law “only requires an insurer to pay the agreed value of the insured property if the property is rendered a total loss from a covered peril.” The court found the language of the statute to be ambiguous, and accordingly construed it in the manner that best conformed to its purpose, in accordance with the Louisiana



Civil Code. The court concluded that the purpose of the Valued Policy Law was “(1) to keep insurers from writing insurance on property for more than it was actually worth, collecting premiums based on that overvaluation, and later arguing that the property was worth less than the face value when the property was destroyed; and (2) to discourage intentional destruction of property by insureds when they are permitted to overinsure their property.” The court reasoned that the insureds’ interpretation “runs counter to the VPL’s effort to link insurance recoveries to premiums paid” because “[s]uch an interpretation of the statute would force the insurer to pay for damage resulting from a non-covered peril for which it did not charge a premium.” The court further noted that the insureds’ interpretation would lead to absurd results by requiring insurers to pay the policy limit where, for example, 20 shingles were damaged by wind and the property was flooded with 10 feet of water, notwithstanding the fact that the policy clearly excluded flood damage. The court declined to follow *Mierzwa* and other Florida caselaw, noting that the language of the Louisiana statute differed from that of the Florida statute. On September 20, 2007, the Florida Supreme Court overruled *Mierzwa* and held that the Florida statute (in the form that it was on the books in 2004) only required payment of the policy limit where a total loss was caused by a covered peril.⁵

In *Landry v Louisiana Citizens Property Insurance Company*,⁶ policyholders claimed that they were entitled to the policy limit under the Valued Policy Law, making the same arguments that were made in *Chauvin*. A state trial court judge granted summary judgment in favor of the policyholders. The insurer appealed to the Louisiana Third Circuit Court of Appeal. A five-judge panel of the court of appeal issued a decision on August 28, 2007. By a vote of three to two, the court of appeal ruled in favor of the insurer, overturning the trial court’s decision. The three judges in the majority largely agreed with the



decision in *Chauvin*, but their reasoning was somewhat different, and they also made extensive comments on issues of insurance policy interpretation, some of which appear to be incorrect. The Louisiana Third Circuit agreed with the U.S. Fifth Circuit that the Valued Policy Law was “never intended to expand coverage beyond that contemplated by the parties to an insurance contract.” Unlike the U.S. Fifth Circuit, however, the Louisiana Third Circuit found that the Valued Policy Law was unambiguous. It explained that the policyholders’ “misguided circuitous reasoning creates an ambiguity in the language of the VPL where none truly exists” and that “[t]he VPL simply fixes a value which an insurer must pay in the event a structure is deemed a total loss and a *factual determination* has been made that the total loss was ‘caused’ by a specified peril defined in the insurance contract.”

The court, however, went on to discuss at length principles of insurance policy interpretation that were not argued by the parties. The court discussed older hurricane cases in which there was evidence that wind had destroyed a home before storm surge flooding washed away

the remains of the home, and courts had allowed the question of whether the damage was caused by wind or water to go to a jury. The court also cited older Louisiana cases that arguably applied an “efficient proximate cause” principle before the advent of anti-concurrent cause language. The court stated that the insurer “bears the clear burden to show that flood waters was the ‘efficient or proximate cause’ of the total loss to Plaintiffs’ home,” and that if it did not meet that burden, it would be required to pay the policy limit. This part of the opinion appears to be incorrect because the policy at issue was a named peril policy, and it is well-established that where the policy is a named peril policy, the insured has the burden of proving that the damage was caused by one of the specified perils that are insured by the policy. Also, the water damage exclusion in the Louisiana Citizens policy contained an anti-concurrent causation clause, which is intended to contract out of the “efficient proximate cause doctrine,” and which has been enforced in almost all jurisdictions. The majority opinion in *Landry* ignored the anti-concurrent causation clause, likely because these policy interpretation issues had never been briefed.

Two judges on the five-judge panel dissented. They would have ruled that “when there exists a total loss which is caused by a covered peril, or caused by a covered peril and a non-covered peril, the insurer is statutorily obligated to compensate the insured for the full face value of the policy.”

On September 27, 2007, both the policyholders and the insurer in the *Landry* case filed applications for further appellate review in the Louisiana Supreme Court. The policyholders asked for expedited treatment. They argued that the state supreme court should agree with the dissenting judges on the court of appeal and overturn the Third Circuit’s decision. The insurer argued that the

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state supreme court should agree with the way that the majority on the court of appeal interpreted the statutory language, but also asked the supreme court to correct errors in the court of appeal's opinion with respect to the burden of proof and the "efficient proximate cause" doctrine. This case is clearly one to watch in the coming year.

In the Mississippi litigation arising from Hurricane Katrina, the U.S. Court of Appeals for the Fifth Circuit issued an important decision on insurance policy interpretation on August 30, 2007. *Leonard v Nationwide Mutual Insurance Company*⁷ involved a homeowners' insurance coverage dispute. The insureds' home in Pascagoula, Mississippi was located less than 200 yards from the Mississippi Sound. The first floor of the home was flooded by the storm surge generated by Hurricane Katrina. The insureds sought to recover under their homeowners policy for the flood damage, and also contended that Nationwide failed to pay enough for the wind damage to their home. The case was tried without a jury, and the trial judge awarded the insureds approximately \$1,200 for damage that he concluded was caused by wind but that Nationwide had not paid for. The trial court's opinion, however, could be read as concluding that the anti-concurrent cause clause in Nationwide's water damage exclusion was ambiguous. Nationwide's policy contained the standard ISO language, which has an anti-concurrent cause clause providing that "We do not cover loss to any property resulting directly or indirectly from any of the following. Such a loss is excluded even if another peril or event contributed concurrently or in any sequence to cause the loss." The trial court concluded that a water damage exclusion with this clause "does not exclude coverage for different damage, the damage caused by wind, a covered peril, even if the wind damage occurred concurrently or in sequence with the excluded water damage." Both parties appealed to the Fifth Circuit.

The court of appeals ruled in favor of Nationwide, concluding that the trial court had misinterpreted the anti-concurrent causation clause. The court concluded that the anti-concurrent causation clause "unambiguously excludes coverage for water damage 'even if another peril'—e.g., wind- 'contributed concurrently or in any sequence to cause the loss.'" The court explained that "[t]he only species of damage covered under the policy is damage caused *exclusively* by wind," and that "if wind and water synergistically caused the *same* damage, such damage is excluded." As an example, the court explained that if rainwater entered through an opening created by wind, that damage would be covered. But if storm surge water then flooded the same area of the home, so that it was impossible to distinguish the rainwater damage from the storm surge damage, the water damage would be excluded. The court also concluded that anti-concurrent causation clauses were enforceable under Mississippi law because there was no caselaw, statute, or principle of public policy precluding the use of such language. The court also rejected the policyholders' argument that the policy did not exclude "storm surge." It explained that "[t]he phrase 'storm surge' is little more than a synonym for a 'tidal wave' or wind-driven flood, both of which are excluded perils."

Overall, the insurance industry has fared well in 2007 in the court battles arising from Hurricane Katrina. Insurers won three major victories in U.S. Court of Appeals in *Katrina Canal Breaches*, *Chauvin*, and *Leonard*. But the battle is not yet over. The Louisiana Supreme Court will have the last word on the "flood" exclusion and the Valued Policy Law in Louisiana, and will probably decide those issues in 2008. Similarly, the Mississippi Supreme Court will have the final word on the interpretation of the water damage exclusion in that state. In 2008, the insurance industry will anxiously await the rulings of these state courts. ■

Endnotes

1. 466 F. Supp. 2d 729 (E.D. La. 2006).
2. 2007 WL 2200004 (5th Cir. Aug. 2, 2007).
3. 2007 WL 223074 (5th Cir. Aug. 6, 2007).
4. 877 So. 2d 774 (Fla. 4th Dist. Ct. App. 2004), overruled by *Florida Farm Bureau Cas. Ins. Co. v Cox*, 2007 WL 2727072 (Fla. Sept. 20, 2007).
5. *Florida Farm Bureau Cas. Ins. Co. v Cox*, 2007 WL 2727072 (Fla. Sept. 20, 2007).
6. 2007 WL 2416107 (La. Ct. App. 3d Cir. Aug. 28, 2007).
7. 2007 WL 2446794 (5th Cir. Aug. 30, 2007).

Claims Interest Group Web Site Report

by Arthur F. Beckman, CPCU, CLU, ChFC



■ **Arthur F. Beckman, CPCU, CLU, ChFC**, is assistant vice president-claims for State Farm in Bloomington, IL. Beckman began his career with State Farm in 1971 in the Mountain States Region. His first position was in the Fire Division and he transferred to the Data Processing division shortly thereafter. He worked full-time at night while attending the University of Northern Colorado full-time. He progressed through the data processing ranks and became a supervisor in 1975. He joined the Sunland Region as a data processing supervisor in 1977, and in 1979 he was promoted to assistant data processing manager in the Northeastern Region. In 1982 he was named DP manager in Michigan. In 1986 he was named assistant division manager in Pennsylvania. In 1988 he became a claim manager in Pennsylvania. He was named director of general claims automation and procedures in July 1995. Beckman assumed his current position in April 1997.

The organization of the Claims Interest Group web site has not had any substantive changes over the last six months. Our focus has been on adding current information to the site and directing more claims professionals to utilize this site. Some key information about the site:

- Information has been grouped into more logical page layouts. The home page shows key information that we want to highlight. The subpages contain details related to the page topic. The current page layout looks like this:

Message from the Chairman
Claims Interest Group Members
Meeting Minutes
Circle of Excellence
Claims Articles
CQ Newsletter
Related Links
Seminars
Photo Gallery

- New articles are added each month. Thanks to William McCullough for providing these. I would encourage others to send articles to me as they come across them.
- Counter tracks usage of web site (as of September 2007).

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- Current statistics indicate we have had 5,638 hits. Based on reports, we can pull the following statistics:
 - Busiest day of week is Wednesday—21.67%
 - Monday—20.02%
 - Tuesday—19.0%
 - Thursday—17.28%
 - Friday—14.03%
- Most active time is 11 a.m. to 11:59 a.m.
- We get more unique visitors than first-time/return visitors
 - first-time—never visited the site before
 - unique—has not visited the site in the last 24 hours
 - return—has been to site in last 24 hours
- Most visitors look at multiple pages within the site.

Visitors come to the site in two fashions. Some will key in the URL and go directly to the site. At other times the visitor will click on a link to the site from another web application.

We have done a number of e-blasts this past year. We did this in an attempt to drive people to the site. Types of e-blasts sent were:

- information about our web site
- information on COE and a link to submission form
- information on the scheduled Annual Meeting seminars in Hawaii
- highlights of current articles that might be of interest to our members

Figures 4, 5, and 6 are a few snapshots of information we have posted to the Claims Interest Group's web site:

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Claims Interest Group Web Site Report

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Figure 1

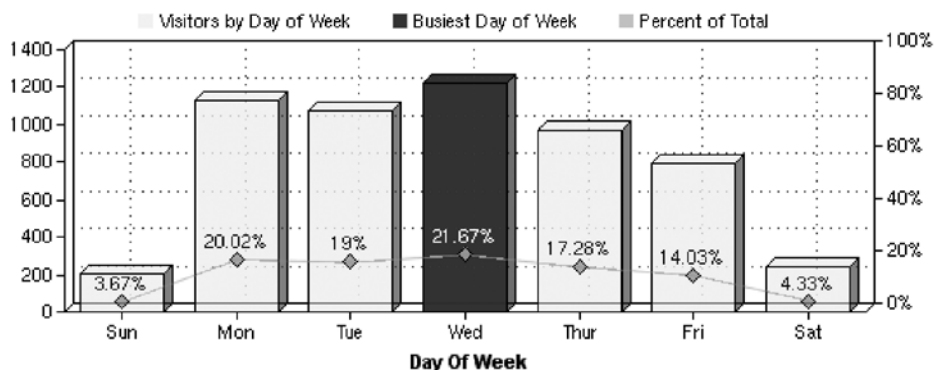


Figure 2

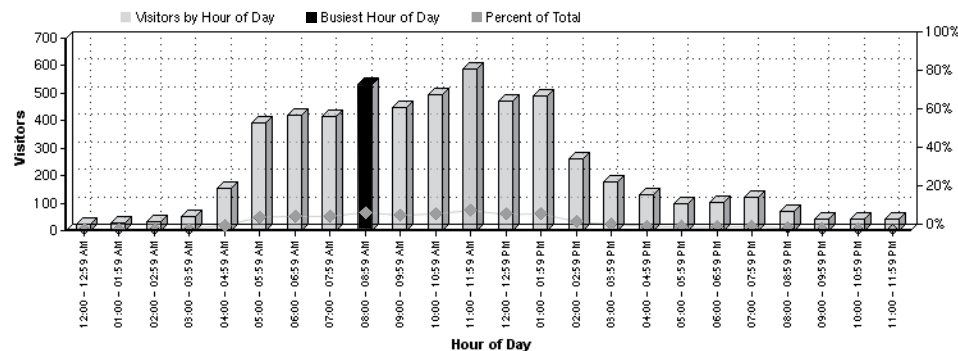
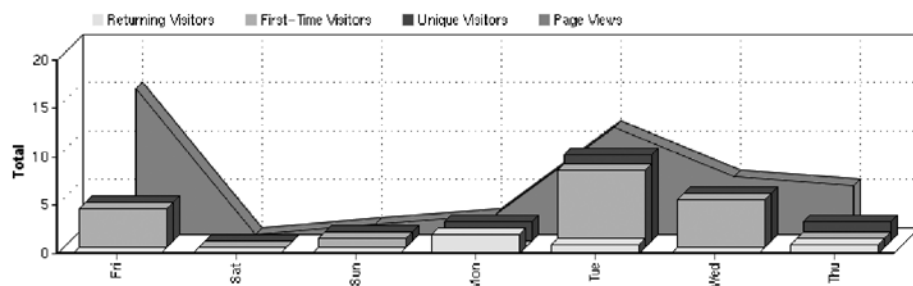


Figure 3



We've also added pictures to the gallery from the Leadership Summit in Orlando and hope to have photos of the Hawaii events on there in a few weeks. If you have not viewed our web site in a while, I suggest you browse the site soon; there is a lot there.

For 2007–2008 we still plan to make the site more effective. We will be considering the following:

- continue to add more, current information to the site (need authors/contributors)
- possible blog so readers can submit topics.
- Updated messages from the chairman (quarterly)
- frequent e-blasts to members highlighting a topic that encourages them to visit the site for more details
- create a recap of the Annual Meeting Claim Seminars, and incorporate into an e-blast to the membership
- more information to be included about seminars (dates, locations, purpose).

Figure 4



Congratulations to all the **Claims Interest Group Members** for achieving **Gold with Distinction** in the **2007 Submission** for "Circle of Excellence" Recognition Program.

Details about the "Circle of Excellence" program and submission can be found on the "Circle of Excellence" web page.

We need your help in submitting information for next years Circle of Excellence. To see GUIDELINES and FORM, click on the COE image.

Figure 5

Future CPCU Society Annual Meeting and Seminars Sites		
	2008 Philadelphia, PA	September 6 - 9, 2008
	2009 Denver, CO	August 29 - September 1, 2009
	2010 Orlando, FL	September 25 - 28, 2010
	2011 Las Vegas, NV	September 24 - 27, 2011
	2012 Washington, DC	September 8 - 11, 2012

Figure 6

Claims Interest Group Articles				
Files / Folders	File Size	Posted By	Date Posted	Actions
▶ CPCU - Twenty One Plead Guilty In North Texas Auto Fraud.doc	24k	claims-admin3	11/12/07	
▶ CPCU - US CIRCUIT COURT SIDES WITH STATE FARM IN MISS. KATRINA CASE.doc	28k	claims-admin3	11/12/07	
▶ CPCU - Louisiana AG Sues Insurers, Alleges Price-Fixing, Conspiracy in Hurricane Claims Payments.doc	27k	claims-admin3	11/12/07	
▶ CPCU - Las Vegas #1, Phoenix #4 in Auto Thefts.doc	26k	claims-admin3	11/5/07	
▶ CPCU - Drowsy Driving a Big Killer in the U.S..doc	30k	claims-admin3	11/5/07	
▶ CPCU - From New Orleans to San Diego.doc	28k	claims-admin3	10/30/07	
▶ CPCU - Wildfires Test Overhaul of Crisis Response.doc	28k	claims-admin3	10/24/07	
▶ CPCU - US Senate Panel Backs Flood Insurance Changes.doc	28k	claims-admin3	10/19/07	
▶ CPCU - Lawyer Whistleblower Suit against Insurers Tossed Out.doc	30k	claims-admin3	10/19/07	
▶ CPCU - Hurricane Katrina.doc	31k	claims-admin3	10/15/07	
▶ CPCU - In 2006 Auto Thefts Down.doc	33k	claims-admin3	10/15/07	
▶ CPCU - Settlement Reached in Katrina Insurance Trial.doc	30k	claims-admin3	10/5/07	
▶ CPCU - Allstate Handling of Claims Assailed.doc	32k	claims-admin3	10/5/07	
▶ CPCU - Road Rage Statistics.doc	62k	claims-admin3	10/4/07	

AICPCU/IIA Annual Report to the CPCU Society

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



■ **Donna J. Popow, J.D., CPCU, AIC, RPA**, is director of curriculum and director of intellectual property for the AICPCU/IIA in Malvern, PA. Popow is a member of the CPCU Society's Philadelphia Chapter and serves as a liaison to the Claims Interest Group Committee.

Update on the CPCU Program

CPCU Class Size

As of August 1, the 2007 class of new CPCU designees totaled 3,949, which was higher than our April 2007 projection of between 3,200 and 3,600 members. Smaller class sizes in 2005 and 2006 suggested that a significant number of students may have adjusted their completion schedules in order to attend this year's conferment in Hawaii.

CPCU Examination Numbers

In 2006, we administered 22,453 CPCU exams and 64,858 IIA exams, for a total of 87,311.

Exam activity for the first half of 2007 reflected increases in the number of CPCU and IIA exams administered.

	Exam Activity Jan.–June 2006	Exam Activity Jan.–June 2007	Difference
CPCU	10,620	11,292	7.3%
IIA*	30,722	32,682	6.4%
Exam Total	41,342	44,074	6.6%

*Reflects all IIA programs and exams

AICPCU National Honors Program

In the CPCU program, a Distinguished Graduate Award is presented to the graduate with the highest combined grade average on all CPCU exams, and Awards for Academic Excellence are presented to the two graduates who earn the next highest combined grade averages on all CPCU exams.

The CPCU-Loman Education Foundation generously sponsors the monetary awards given to the 2007 CPCU award winners. The Institutes provide plaques to the recipients and maintains a special page on our web site containing the names and photos of all CPCU and IIA national award winners.

The 2007 CPCU award winners are as follows:

- **Distinguished Graduate Award Recipient**

Deborah A. Betten, CPCU, AIC
The Harford Mutual Insurance Companies



Betten

- **Award for Academic Excellence Recipients**

Scott A. Behrent, CPCU, AIC
Farm Family Casualty Insurance Company



Behrent

Rita M. Schrader, CPCU, AU, API, AIS
Peerless Insurance, member of Liberty Mutual Group



Schrader

CPCU Study Material Revisions

The Institutes regularly revise their study materials to ensure that they remain current, accurate, and relevant. For exams beginning in January 2008, there are revised study materials (textbooks and/or course guides) for the following CPCU courses:

CPCU 510—Foundations of Risk Management, Insurance, and Professionalism

CPCU 551—Commercial Property Risk Management and Insurance

CPCU 552—Commercial Liability Risk Management and Insurance

CPCU 555—Personal Risk Management and Property-Liability Insurance

CPCU 556—Personal Financial Planning

CPCU 557—Survey of Commercial Risk Management and Insurance

CPCU 560—Financial Services Institutions (new edition of the McGraw-Hill textbook)

The Institutes have also revised study materials in numerous IIA programs. These are listed in the 2008 *Succeed* catalog.



Peter L. Miller, CPCU, president and CEO of the Institutes, addresses the audience at the AICPCU Conferment Ceremony in Honolulu, HI.

New Institute Products and Programs

COMET Online Learning

COMET Online Learning is a new approach to professional development from the Institutes. By design, COMET closes technical knowledge gaps and helps develop critical skills that promote success and the ability to compete in the workplace. COMET also supports and complements Institute certificate and designation programs, which meet a broader range of educational needs, by preparing individuals to begin more comprehensive continuing education activities.



COMET customizes and delivers accurate and performance-enhancing Institute course content broken down into easy-to-study modules. Each self-paced module focuses on a clear and concise educational objective, and a quiz at the end of the module assesses how well the student understands the material.

The first suite of COMET products—Insurance Fundamentals—is currently available and includes the following:

- Claim Handling Fundamentals
- Insurance Business Fundamentals
- Insurance Fraud Prevention Fundamentals
- Insurance Policy Fundamentals
- Insurance Ratemaking Fundamentals
- Insurance Regulation Fundamentals
- Reinsurance Fundamentals
- Risk Management Fundamentals
- Underwriting Fundamentals

COMET Online Learning is SCORM compliant and will integrate seamlessly with an organization's existing learning

management system. A free COMET demo is available on the Institutes' web site, www.aicpcu.org.

Custom Products

To satisfy the growing market demand for customized educational content, the Institutes established Custom Products, formal consulting services that evaluate customers' current education programs, design customized content using Institute study materials, and administer post-instruction assessment. By providing job-specific learning that can raise skills to a higher level, Custom Products help Institute customers ensure that their employees stay ahead of the competitive learning curve in today's marketplace.

Using Institute content customized by insurance education experts, Custom Products offer businesses techniques and approaches tailored to address their employees' precise education needs. Custom Products provide an optimal blend of scalable training, case-based learning, blended learning options, pre- and post-instruction assessments, and outstanding customer support.

Marketing/Communications Services

Advertising the CPCU Designation

The Society and the Institutes have benefited from a close association in the area of advertising. Insurance trade publications allow us to combine our advertising placements; therefore, the publications in which we both advertise, such as *Best's Review*, *Business Insurance*, *National Underwriter*, and *Risk & Insurance*, give each organization a lower combined rate than we would earn separately. This cooperation allows us to maximize our collective ad budgets and to publicize more widely the benefits of earning the CPCU professional designation.

Continued on page 14

AICPCU/IIA Annual Report to the CPCU Society

Continued from page 13



"I needed a competitive edge."

"And I got that edge from the Institutes. They gave me the foundation, the purpose, and the persons I needed to build a successful practice. The knowledge I gained let me break free from the insurance transaction—it gave me the passion to become a trusted advisor and partner to my clients."

F. Scott Addis, CPCU • The Addis Group

What do YOU need?

The right professional development program can give you a competitive edge. With the Institutes, you'll get in-depth, real-world professional education you need in areas like agency management and insurance production, claims, underwriting, risk management, and more.

The Institutes gave Scott Addis the knowledge and skills he needed to build his business, set himself apart, and serve his clients better.

Log on to www.aigpcu.org/edge/index to learn more. We'll help you get started.

American Institute for CPCU • Insurance Institute of America
www.aigpcu.org • (800) 644-2191 • convg@iia.org

AICPCU/IIA logo

Ads featuring successful CPCU designees continue to run. The first ad in this series features F. Scott Addis, CPCU, of The Addis Group, King of Prussia, Pennsylvania. The second ad features James A. Franz, CPCU, AIC, ARM, of Indiana Farm Bureau Insurance, and the third features Melissa O. Leuck, ARM, a risk manager working in the pharmaceutical industry in Chicago.

The 2007 Jack F. Derrickson Award for Outstanding Course Leadership

Robert T. Harrington, CPCU, ARM, is the 2007 recipient of the Jack F. Derrickson Award for Outstanding Course Leadership, which is presented annually to a teacher of insurance courses whose students pass national CPCU and IIA exams at a rate higher than the national average over an extended period of time.

Currently a product director in the small commercial business unit at Travelers Insurance in Cary, Illinois, Harrington has 24 years of experience in product line management, product development,

training/skills development, and marketing management. He began teaching Institute courses in 1996 for the Insurance School of Chicago.

Free Institute Podcasts

The Institutes offer a series of free podcasts, or Internet-delivered audio programs, that cover a variety of topics of interest to insurance professionals and risk managers. Our ethics series, released in conjunction with Ethics Awareness Month this past March, focuses on discussions of professional ethical dilemmas that might arise in the course of doing business. Panelists for the two ethics podcasts are Chris Amrhein, AAI, Amrhein & Associates; Mary Ann Cook, CPCU, AU, AAI, the Institutes; and Donna Popow, J.D., CPCU, AIC, the Institutes.

The first podcast released in our risk management series centers on computer crime and its implications relative to business, social, and economic well-being. Panelists are Lori Bailey, AIG/National Union; Richard G. Berthelsen, J.D., CPCU, ARM, the Institutes; and Special Agent Shena Crowe, Federal Bureau of Investigation. Future podcasts in this series will address other vital risk management topics.

The podcasts are available at no charge at our web site for downloading and listening on computers or on digital audio players. Visitors to the web site may also subscribe to our podcast feeds to receive future releases automatically.

Free Career-Building Webinars

Sandy Masters, CPCU, CPIW, AIS, ITP, western region marketing director for the Institutes, hosts two ongoing professional development webinars that give students, supervisors, managers, mentors, and others opportunities to learn about (and ask questions about) studying with the Institutes.

"Your Path to Professionalism" is an interactive presentation that highlights the more than 29 property/casualty and

risk management education programs offered by the Institutes. CPCUs, as role models to others, are especially encouraged to attend to learn about how they can better mentor colleagues to achieve their professional development goals through the CPCU program.

In the webinar entitled "Achieve and Succeed: Strategies for Successful Learning," Masters highlights what successful students are doing to pass Institute exams and answers questions such as, "What are educational objectives? What are some proven exam preparation techniques?" and "What is the Institutes' online grade analysis tool?"

More information, including upcoming dates and times, is available on the Institutes' web site under "What's New" on the home page.

Insurance Research Council Update on Insurance Research Council (IRC) Studies:

In July 2007, the IRC published *Highway Safety Issues*, reporting the findings from a public attitude and opinion survey on cell phone use and driving, use of red light and speed cameras, motorcycle helmet laws, event data recorders, and other safety-related issues. The report documents strong and growing support for red light and speed cameras as well as for laws requiring the use of motorcycle helmets.

Municipal Bond Holdings of Property-Casualty Insurance Companies, published in May 2007, documents the role of the property/casualty insurance industry in municipal bond markets, and presents state-specific findings on the extent to which industry-held municipal bonds are used to finance education, healthcare, public utilities, and various other public programs.

Natural Disasters, a public attitude and opinion survey published in August 2006, explores public perceptions of the threat of natural disasters and the steps

taken to reduce the risk of personal loss from natural disasters. The survey also documents public support for policies and initiatives addressing issues related to natural disasters. A follow-up study, *Influence of Coastal Proximity on Natural Disaster Preparedness and Planning*, released in November 2006, looks at how public perceptions and opinions vary based on proximity to the Atlantic and Gulf coasts.

Uninsured Motorists, 2006 Edition was published in June 2006. This study examines trends in the percentage of uninsured motorists in each state based on uninsured motorists and bodily injury claim frequencies from 1999 to 2004. The study concludes that about one in seven at-fault drivers across the United States is uninsured, and that the uninsured motorist rate has increased since 1999.

2007 Research Projects

IRC research projects scheduled for publication in 2007 include the following:

- *Alternative Medical Treatment in Automobile Injuries*. This study will document the growing use of alternative treatment among auto injury claimants.
- *Trends in Auto Injury Claims*. This study will update key measures of the frequency and severity of auto injury claims countrywide and for individual states.
- *Auto Injury Insurance Claims*. This study will provide updated, detailed information on the utilization and cost of medical care by auto injury claimants in the United States.
- *Claimant Use of Attorneys in Auto Injury Claims*. This survey of auto injury claimants will explore the role of attorneys in auto injury claims.

A complete listing of previous reports published by the IRC is available on the IRC's web site.

IRC members in 2007 include:

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

Update on AICPCU/IIA Administration Change

Saul Swartout Named New Executive Vice President

In April, the Institutes welcomed Saul Swartout as their new executive vice president of operations. He oversees the Customer Support, Human Resources, Information Services, Marketing, Marketing Communications, and Sales Departments. He also serves as a member of the executive management team.

Swartout's nearly 30 years of industry experience will help the Institutes realize their new strategic vision. Most recently, Swartout served for two and one-half years as a senior consultant with Robert E. Nolan, Inc., an operations and technology firm specializing in insurance, banking, and healthcare.



The Institutes Welcome Three New Board Members

In June, the AICPCU/IIA Board of Trustees welcomed the following new board members:

Brian E. Dowd, CPCU, is chief executive officer, Insurance-North America, for ACE Limited.

Joseph A. Gilles, CPCU, FCAS, MAAA, is executive vice president, agency markets, for Liberty Mutual Group.

George E. Ruebenson is president of Allstate Protection. ■

Side Airbags Save Lives without Increasing Collision Losses

by Rebecca Trempel

Editor's note: This article was originally published by the Highway Loss Data Institute and is reprinted here with permission.

■ **Rebecca Trempel** is a statistician for the Highway Loss Data Institute.

Side airbags debuted on the 1995 Volvo 850. Initially, side airbags were available mainly on luxury cars and luxury SUVs but have now increased in popularity and were installed in more than 70 percent of 2006 passenger vehicle models. Side airbags come in several forms (curtain, pillow, and tube) and can be mounted in the seat, door, and/or roof. Depending on the location and type of airbag, the system protects an occupant's head and/or torso (chest and abdomen) in side impacts. Side airbag replacement costs vary significantly by vehicle series. Excluding other vehicle damage, costs range from a few hundred dollars (e.g., Chrysler PT Cruiser) to more than \$5,000 (e.g., Toyota Camry) but typically are \$1,000 to \$3,000 (e.g., Honda Accord).

Research by the Insurance Institute for Highway Safety (IIHS) shows that side impact airbags that provide head protection are reducing driver deaths in cars struck on the near (driver) side by an estimated 37 percent. Airbags that protect the torso but not the head are reducing deaths by 16 percent.

The Highway Loss Data Institute (HLDI) recently examined side airbag deployments and the effect of side airbags on collision losses. Deployment results were based on the presence of side airbag replacements in the damage repair data provided by CCC Information Services Inc. Although some airbag replacements may have been due to causes other than deployments, it was assumed that the majority were due to deployments from impacts. Claims from selected 2000–2005 models with optional or standard side airbags were used in the deployment

analyses. The analyses were based on almost 600,000 collision and property damage liability (PDL) claims with about 12,800 side airbag deployments.

HLDI looked at the deployment rates for side and front airbags by coverage and damage amount based on selected 2000–2005 models. For collision and PDL claims combined, deployment rates were 2.2 percent for side airbags and 3.9 percent for front airbags. For damage amounts less than \$5,000, only 0.3 percent of claims involved side or front airbag deployments. This percentage increased rapidly as the amount of damage increased, with side airbag deployments in 6.6 percent of claims of \$5,000–\$10,000 and in 20.4 percent of claims of more than \$10,000. Side airbag deployment rates can vary significantly at the vehicle series level because of differences in airbag design and vehicle characteristics.

Collision losses were examined in two ways: comparing losses before and after side airbags were introduced, and comparing vehicles with and without side airbags for vehicle series with VIN-discernible optional side airbags. Results are presented in relative terms,



with 100 equaling the all-passenger-vehicle average. Relative results control for vehicle aging and trends in losses across calendar periods. Results across model years were computed by taking an exposure-based weighted average.

HLDI then examined the collision losses for 1998–2005 models before and after standard side airbags were introduced. Results are an exposure-weighted total of the 15 individual vehicle series that added standard side airbags with no concurrent redesign. Model years spanned from 1998 to 2005 but were fewer for most vehicles due to redesigns. Losses are reported in relative terms with 100 representing the average collision loss for all vehicles. Model years after side airbags were introduced had slightly lower claim frequencies (102 vs. 104) and slightly higher average loss payments per claim (90 vs. 88) than the model years before side airbags. These results combined to produce no change in overall losses—91 for model years both before and after side airbags were introduced.

HLDI also looked at relative collision losses by side airbag availability for 2000–2005 models with VIN-discernible optional side airbags. Results are an exposure-weighted total of the 69 individual vehicle series. Vehicles with side airbags, compared with vehicles without side airbags, had slightly lower claim frequencies (103 vs. 106) and slightly higher average loss payments per claim (94 vs. 92). Overall losses were equal for the two groups (97).

Conclusion

IIHS research has found that side airbags are reducing driver fatalities in side crashes. When HLDI looked at collision losses for vehicles with and without side airbags, it found that the addition of side airbags had no significant effect on collision losses. Thus, the installation of side airbags is a win-win situation—lives are being saved and insurance crash damage losses are not increasing. ■

P.S., Your Cat Is Dead (Yeah, But What Is It Worth?)

by George M. Wallace, J.D., CPCU



■ **George M. Wallace, J.D., CPCU,** is a partner in the small Pasadena, California law firm Wallace & Schwartz. His practice concentrates on property and casualty insurance coverage issues. He received his juris doctor degree from the University of California, Los Angeles, School of Law. He practiced with several insurance defense law firms in the Los Angeles area until 1995, when he and his partner established their current firm. He is admitted to practice before all California state courts, all four California districts of the United States District Court, and the Ninth Circuit United States Court of Appeals.

Wallace served as president of the CPCU Society's San Gabriel Chapter, and is currently vice president of the Los Angeles Chapter. He was awarded the Rie R. Sharp Memorial Award (Insurance Person of the Year) by the Los Angeles-area chapters in 2000.

Wallace speaks and writes regularly on legal and insurance topics, and teaches CPCU 530 (The Legal Environment of Insurance) for the Insurance Educational Association. He maintains two online weblogs (blogs): the California law-oriented site *Declarations & Exclusions* (<http://declarationsandexclusions.typepad.com/weblog/>); and the more personal *A Fool in the Forest* (<http://declarationsandexclusions.typepad.com/foolblog/>), which received a 2005 Blawg Review Award.

The recent spate of injuries and deaths of cats and dogs caused by contaminated pet foods has re-stimulated interest in the appropriate measure of damages for the loss of non-human animals. Non-human they may be, but pets are more and more frequently treated and perceived as the four-footed equivalent of members of the family. As unhappy pet owners confront their losses, those who turn for comfort to their lawyers are likely surprised to learn that, in most states, Fluffy, Kitty, Spot, Bongo, or Hieronymus is regarded in the law as . . . just another item of personal property, to be valued by the same measures as a washing machine, a potted plant, a VCR, or a lava lamp.

The traditional common-law measure of damages for injury to or destruction of personal property, at least when that injury or destruction results from negligence or other non-willful conduct, is limited to the cost of repairing or replacing the property or the property's market value immediately prior to the injury, whichever value is less. Unless the unfortunate cat or dog is an exotic breeding animal or a proven show champion, the odds are that most animals' monetary value as determined by traditional rules is relatively modest. The tainted pet food cases, however, have revitalized an already active movement seeking to revisit that measure of damages, and to require courts to acknowledge the intangible emotional bonds that may exist between pet owners and their furry companions. A recent *Wall Street Journal* article (Sara Schaefer Munoz, "How Much Is Your Dog's Life Worth?" *WSJ*, April 26, 2007, at p. D1) sums up the current legal ferment:

Lawyers, animal-rights activists, and pet owners are arguing that most state laws dealing with pets are outmoded and fail to consider that pets play the role of companions in today's society. They say pet owners whose animal is injured or killed should receive compensation not only for veterinarian bills and a replacement animal—but for emotional distress as well. While legal experts say big payouts for emotional

damages are unlikely in the pet food cases, the lawsuits and large numbers of pets affected could accelerate a growing trend to give pets more recognition under the law.

Courts in a small minority of states—among them are Florida, Hawaii, Idaho, possibly Vermont, and to some extent Alaska—recognize expansive measures of damages for negligent loss of animals, but the majority rule is clearly to the contrary. If there is to be a major shift to award compensation for emotional distress, loss of companionship, and the like, it will most likely come from state legislatures. Only one state, Tennessee, has ever passed legislation permitting recovery of non-economic damages for the loss of a dog or cat. The "Tennessee T-Bo Act"—named for the deceased dog of the senator who introduced it—permits recovery of non-economic damages by a pet owner for the loss of a pet, but is subject to numerous restrictions that limit its practical impact: damages are limited to \$4,000, the loss must occur when the animal is at home or under the owner's direct control, the statute is applicable only in specified parts of the state, and no liability will lie against non-profit, governments, or veterinarians. Other states have seen legislation introduced over the years, and more is rumored to be in preparation, but no other similar statute has yet emerged from a legislature to become law.

For those interested in monitoring this or other animal-related legal issues, the web site of the Animal Legal and Historical Center of the Michigan State University College of Law, at www.animallaw.info, is an invaluable and comprehensive source of information on all aspects of animals and the law. The Center recently published a jurisdiction-by-jurisdiction overview of the current state of the law: Marcella S. Rouskas, "Determining the Value of Companion Animals in Wrongful Harm or Death Claims: A Survey of U.S. Decisions and an Argument for the Authorization to Recover for Loss of Companionship in Such Cases" (2007) http://www.animallaw.info/articles/ddus50statesurvey_companion_animals.htm. ■

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From the Editor

by Robert M. Kelso, J.D., CPCU



■ **Robert M. Kelso, J.D., CPCU**, is a senior partner with the law firm of Kightlinger and Gray in Indianapolis, IN, and is a past president of the CPCU Society's Central Indiana Chapter. Kelso concentrates on insurance defense, and also chairs the firm's Employment Practices Liability Defense Group.

This note will summarize the CQs published over the last year, while I have served as the editor, and introduce my successor, Keithley D. Mulvihill, J.D., CPCU.

The Claims Interest Group Editorial Team, which also includes Keithley D. Mulvihill, J.D., CPCU, Marcia A. Sweeney, CPCU, James W. Beckley, CPCU, Eric A. Fitzgerald, J.D., CPCU, and Kenneth R. Hoke, CPCU, developed four issues of *Claims Quarterly* during this time. Three of the four issues were 20 pages, and one issue was 16 pages. There were 28 articles in total, and the editions contained the following number of articles:

- November 2006: 6 articles
- March 2007: 7 articles
- May 2007: 7 articles
- July 2007: 8 articles

Claims Interest Group members wrote 15 of the articles. Eleven of the articles were written by outside contributors, and two of the articles were reprints.

The nature of the 28 articles was as follows:

- claim technical or legal: 12 articles
- claim operational or career management: 10 articles
- CPCU initiatives/activities: 6 articles

One of the goals of the editorial team was to achieve a balance of these categories, and I think we achieved that goal.

The editor also notes that each of the four CQs in this time period also included exemplary Chairman's Corner reports from the interest group chairman (included in the "career management" numbers above).

Members of the Claims Interest Group that submitted articles during this Circle of Excellence time frame include: Patrick H. Jeremy, CPCU, Elise M. Farnham, CPCU, Robert E. McHenry, CPCU,

Kathleen J. Robison, CPCU, CPIW, Barbara J. Keefer, J.D., CPCU, John Rodney Caudill, CPCU, Robert M. Kelso, J.D., CPCU, Marcia A. Sweeney, CPCU, Kevin M. Quinley, CPCU, James D. Klauke, CPCU, and Eric A. Fitzgerald, J.D., CPCU. We appreciate the sharing of their knowledge and experience, which helps us all add to our own capabilities, and we appreciate that they were willing to devote the necessary time and effort.

My predecessor, Marcia A. Sweeney, CPCU, in particular, provided excellent coaching, editing, and practical help in getting these CQs out, and I express my thanks to her. My successor, Keithley D. Mulvihill, J.D., CPCU, is fortunate that Sweeney will still be on our editorial team.

Mulvihill is a resident partner in Rawle & Henderson's Pittsburgh office. He is a Pittsburgh native, and has been practicing in Pittsburgh and western Pennsylvania for more than 20 years in the areas of product liability, general liability, and insurance coverage. I look forward to working with him as a member of the editorial team. ■

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Claims Quarterly

is published four times a year by and for the members of the Claims Interest Group of the CPCU Society.
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Statements of fact and opinion are the responsibility of the authors alone and do not imply an opinion on the part of officers, individual members, or staff of the CPCU Society.

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Printed on Recycled Paper

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



Claims Quarterly

Volume 25

Number 4

December 2007



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