

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.

Editor's note: If you haven't visited the Career Center on the Society's web site I encourage you to do so. There are job postings from carriers across the country and there are articles from well known recruiters and human resource specialists. Visit www.cpcusociety.org, Career Center/Job Network.

Is your career at a stand still? Do you have a personal development plan?

Westfield Group, where I work, has an excellent job posting and career path program. I have applied for several jobs through the postings. Yet, even though the qualifications were met, someone else would get the position. It is a very frustrating feeling to interview and be rejected for a job you can do and do

well. Hey, I'm Bob McHenry and I'm a good claims professional, hire me. My scorecard was one job turned down due to location and 14 rejections . . . ouch!

In the midst of my losing streak colleagues Pat and Sheila suggested that I draft a development plan. This was done and it became apparent how much more was needed. Yet it took another rejection to get me moving. Sheila and my supervisor Tony offered to help with mock interviews for the next position. The next real interview went much better. Losing to Bud, who is an excellent candidate, was easier to take. Kevin, the hiring manager, offered post interview feedback. Tony attended the session with me.

What came out of the feedback meeting was a new personal development plan. Here is a summary of the discussion and a draft:

- Relax and be less animated.
Be yourself and show your sense of humor.

- Read one or two self-help books a year.
- Get a mentor
- Seek guidance
- Involve others
- Take courses and be willing to learn
- Use your psychological profile often
- Take your two greatest strengths and build on them and work on your two greatest weaknesses (know what they are, interviewers will ask!).
- Formalize your plan, put it in writing and update it.
- Help others with their plans.

The plan was put into place and I applied and interviewed for the claim manager's position in Jacksonville, Florida. It's hard to believe that the move to Florida was just over a year ago. The streak was over. Could it be that easy? No, it wasn't easy and took a lot of work and self-reflection. Here are the details.

Continued on page 2

What's In This Issue

Chairman's Corner	1
AIC—Join Us and Celebrate Your Achievement!	2
Clear Eye for the Claims Guy: Fifth Annual Look Back at the Year's 10 Most Significant Insurance Coverage Decisions	3
What Does It Take to Be a Professional Claims Negotiator?	9
Ten Tips for Negotiating with Plaintiff Attorneys	11
Task "Liposuction" Can Boost Claim Productivity!	13
Claims Run-Off with Class	15
Katrina's Catastrophic Adjuster Teams	17
Claims Section Wins Gold for 2005 Circle of Excellence Submission	20
What National Service Means to Us	22

Chairman's Corner

Continued from page 1

- The six self-help books I read are *Don't Sweat the Small Stuff*; *The Discipline of Execution*; *Feedback Is a Gift*; *The Stress of Organizational Change and How to Handle It*; *Inspirational Quotes for Managers*; and *Designated for Success*.
- My best friend John became my mentor. He was my Dale Carnegie instructor in 1989. He is a patient tutor and plainly discusses both sides of a matter. He gives advice when needed or asked including a brick-to-head wake up call. (John, thank you my friend.)
- A leader is always learning. I completed the core courses of the CPCU Society's National Leadership Institute and have taken at least one course yearly in Tampa and Phoenix. Other courses included the "Dale Carnegie On-Line Manager's Course" and internal training.
- My employer offered psychological profiles. The tests included "Big Five," "Myers-Briggs," and "Lominger 360." What Kevin also recommended, and I took it to heart, was to review these documents often and share them with my peers and direct reports. Revealing my inner make-up was scary at first. I realized that sharing this personal information fosters understanding.
- Take the two biggest strengths from these profiles and build on them. Target your two prominent weaknesses and work on them too. Yes, it is okay to have weaknesses and be working on improvement.
- Talk to your peers and ask their help while you are working on a weakness. Let them know what you are doing and tell them it is okay to bluntly say "you're doing it again." Hey, I'm revealing my inner self by writing this

article and working on two weaknesses at once.

- I put my plan in writing. You are looking at the "30,000 foot view." Update yours and review it often.
- Help others with their plans and share your experience.

Write your plan and put it into action. Please do let me know how it is working and if there is anything I can do to help you achieve your plan. ■

"It is hard to leave footprints on the sands of time if you're sitting on your butt. And who wants to leave butt prints on the sands of time."

—Author-Unknown

AIC—Join Us and Celebrate Your Achievement!

by Donna J. 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 Section Committee.

If you recently earned the AIC designation from the Insurance Institute of America, we invite you to attend a special AIC conferment ceremony to be held in conjunction with the opening day of the 2006 PLRB Annual Claims Conference, on Sunday, April 2, 2006, at the Gaylord Opryland Resort, Nashville, Tennessee.

You will receive formal recognition of your achievement and then be able to network and celebrate with industry colleagues and make new friends. Those who hold the AIC, CPCU, or another Institute designation are invited to this exclusive event. There is no charge to attend.

Make Your Reservation Today

While there is no charge to attend this event, we do request the favor of a reply. To reserve your space at our reception, you can register online when you register

for the conference. If you prefer to mail your registration, just check the box next to the words "Special Event" on the PLRB/LIRB 2006 Claims Conference registration form.

It's Not Too Late

If you have already sent in your registration form and didn't register for the reception, that's not a problem. Just let us know. Contact Jennifer Smith at the Institutes at smithj@cpcuiia.org and she will see to it that you are registered. We hope to see many of you at this special event. ■

Clear Eye for the Claims Guy

Fifth Annual Look Back at the Year's 10 Most Significant Insurance Coverage Decisions

by Randy J. Maniloff



Randy J. Maniloff is an attorney at White and Williams, LLP in Philadelphia. He concentrates his practice in the representation of insurers in coverage disputes over primary and excess policy obligations for various types of claims, including construction defect, mold, general liability (products/premises), environmental property damage, asbestos/silica and other toxic torts, first-party property, homeowners, director's & officer's liability, a variety of professional liability exposures, including medical malpractice, media liability, community associations, public official's liability, school board liability, police liability, computer technology liability, managed care and additional insured/contractual indemnity issues. The author expresses his appreciation to firm partner Gale White for her invaluable assistance in the preparation of this article. The views expressed herein are solely those of the author and are not necessarily those of his firm or its clients.

Editors Note: The following article is an "excerpt" from the author's 24-page article that appeared in the January 10, 2006 issue of *Mealeys' Litigation Report—Insurance*. Please feel free to contact the author at maniloffr@whiteandwilliams.com for a copy of the full article. The article presented here will discuss the top 10 cases and provide a longer discussion on four of them that this editor feels would be of most interest to the majority of the CQ readers.

An insurance claims manager says to a customer, "Thank you for your patronage, Mr. Smith. I wish we had 20 policyholders just like you." "Gee, it's nice to hear you say that," Mr. Smith replied. "But I have to admit, I'm kind of surprised. As you know, I make many claims and my premium payments are always late." "That's OK," the claims manager replied. "We'd still like 20 customers just like you. The problem is, we have 200."

Insurance is about one thing—claims. So it shouldn't come as a surprise to anybody that there are a lot of them. One consequence of so many claims is that a large number of decisions addressing insurance coverage—likely in the thousands—are collectively issued each year by all levels of state and federal courts. I am grateful for the opportunity to make the case for 10 decisions from this huge pool from the year gone by that are likely to play a significant part in shaping the insurance coverage landscape in the years ahead.

There is nothing scientific or democratic about the method used to select these cases. It is an entirely subjective process based generally on the following criteria. Each decision (i) is (for the most part) from a state supreme court or circuit court of appeal; (ii) addresses a coverage issue that has the potential to affect a large number of future claims; and (iii)

either alters a previously held position or sheds light on a burgeoning issue.

The following were the most significant insurance coverage decisions in 2005 (listed in the order that they were decided):

General Agents Insurance Company of America v Midwest Sporting Goods Company—Illinois Supreme Court put the kibosh on an insurer's attempt to recover defense costs following a declaration that the insurer had no duty to defend. But the California and Montana Supreme Courts disagreed. The Texas Supreme Court allowed reimbursement in the indemnity context in *Excess Underwriters at Lloyd's, London v Frank's Casing Crew & Rental Tools*.

State Fire and Tornado Fund of the North Dakota Insurance Department v North Dakota State University—North Dakota Supreme Court addressed a key coverage issue concerning Hurricane Katrina five months before the first raindrop in New Orleans. It doesn't get much more prescient than this.

Nav-Its, Inc. v Selective Insurance Company of America—New Jersey Supreme Court finally ended its silence on the absolute pollution exclusion. The high court limited the exclusion to the Swamps of Jersey. An absolute pollution exclusion honorable mention goes to *The Quadrant Corporation, et al. v American States Insurance Company*, in which the Supreme Court of Washington told policyholders: How do you like them apples? Bonus case—Judge Alito on the sudden and accidental pollution exclusion.

Liberty Mutual Insurance Company v Treedale, Inc.—Liberty Mutual got back up on the horse after Spaulding Composites sought to enforce its non-cumulation clause. Third Circuit's response: Money does not grow on Treedale. Honorable mention to

Continued on page 4

Clear Eye for the Claims Guy

Continued from page 3

Hirald v Allstate Insurance Company—New York Court of Appeals addressed a non-cumulation clause.

The Goodyear Tire & Rubber Co. v Dynamic Air, Inc.—Minnesota Supreme Court ruled that a party insured by an insolvent insurer remained liable for any portion of the claim between the maximum amount available from the guaranty association (\$300,000) and the liability limit of the insolvent insurer's policy. This question will soon be decided by the New Jersey Supreme Court.

Chelsea Associates, LLC v Laquila-Pinnacle—New York Appellate Division gave insurers one more reason to adopt ISO's recent additional insured endorsements that preclude coverage for an additional insured's sole negligence.

BP America, Inc. v State Auto Property & Casualty—Supreme Court of Oklahoma issued a treatise on the distinction between the phrases "any insured" and "the insured" as used in policy exclusions.

Taurus Holdings, Inc. v USF&G—Florida Supreme Court addressed whether liability policies issued to gun manufacturers were triggered for suits by municipalities. The court's comprehensive discussion of the phrase "arising out of" also made the decision significant.

Hooters of Augusta v American Global Insurance Company—Eleventh Circuit fired the latest (but not most significant) shot in the see-saw battle over the availability of advertising injury coverage for junk faxes. The real shelling over this issue took place in Illinois.

Significant Insurance Coverage Decisions in 2005

***General Agents Insurance Company of America, Inc. v Midwest Sporting Goods Company, et al.*, 215 Ill. 2d 146, 828 N.E.2d 1092 (2005); *Excess Underwriters at Lloyd's, London v Frank's Casing Crew & Rental Tools, Inc.*, 2005 Tex. LEXIS 418.**

In *Midwest Sporting Goods*, the Illinois Supreme Court answered whether an insurer that reserved its rights to do so was entitled to reimbursement of its costs to defend an insured in an underlying action in which it was later judicially determined that no duty to defend was owed.

General Agents Insurance Company of America (Gainsco) funded the defense of Midwest Sporting Goods in an underlying action brought by the City of Chicago alleging that Midwest created a public nuisance by selling guns to inappropriate persons. *Midwest Sporting Goods* at 1093. Gainsco funded the defense subject to a reservation of rights, specifically informing the insured that such rights "include[d] the right to recoup any defense costs paid in the event that it is determined that the Company does not owe the Insured a defense in this matter." *Midwest Sporting Goods* at 1095.

Gainsco filed an action seeking a declaration that it did not owe *Midwest Sporting Goods* a defense in the underlying *City of Chicago* litigation and that Gainsco was entitled to recoup all defense costs paid to Midwest's counsel in the litigation. It was ultimately determined that Gainsco did not owe a defense to Midwest because the plaintiffs in the underlying litigation were seeking damages for economic loss and not bodily injury. That decision was affirmed by the Illinois Appeals Court and Midwest did not seek further review. *Midwest Sporting Goods* at 1094-1095.



Having established that no duty to defend Midwest was owed, the trial and appeals courts also held that Gainsco, which reserved its right to recoup defense costs, was now entitled to their recovery. That issue made its way to the Illinois Supreme Court.

Midwest argued before the Supreme Court that the Gainsco policy contained no provision allowing for the recovery of defense costs. Gainsco's position was that this argument must fail because, following the courts' determination that no duty to defend was owed, there was no contract governing the parties' relationship. *Midwest Sporting Goods* at 1097.

The court acknowledged that other jurisdictions allow an insurer to recover defense costs from its insured where the insurer provides a defense under a reservation of rights, including the right to recoup defense costs, the insured accepts the defense and a court subsequently determines that the insurer did not owe a defense. *Midwest Sporting Goods* at 1100. Nonetheless, the Illinois Supreme Court determined to follow the minority position.

The Illinois Supreme Court also rejected Gainsco's argument that, following the lower courts' decision that no duty to defend existed, there was no contract governing the parties' relationship. The Supreme Court noted that the problem with this argument was that Gainsco was defining its duty to defend based on the outcome of the declaratory judgment action, yet an insurer's duty to defend arises as soon as damages are sought. *Midwest Sporting Goods* at 1103.

Despite its conclusion, the Illinois Supreme Court did not rule out the possibility of an insurer recovering defense costs under different circumstances: "Certainly, if an insurer wishes to retain its right to seek reimbursement of defense costs in the event it later is determined that the underlying claim is not covered by the policy, the insurer is free to include such a term in its insurance contract. Absent such a provision in the policy, however, an insurer cannot later attempt to amend the policy by including the right to reimbursement in its reservation of rights letter." *Midwest Sporting Goods* at 1103.

***Chelsea Associates, LLC, et al. v Laquila-Pinnacle, et al.*, 21 A.D.3d 739, 801 N.Y.S.2d 15 (2005).**

When it comes to coverage for additional insureds, it's the oldest story in the book. A subcontractor is obligated by agreement to name the general contractor as an additional insured under the subcontractor's commercial general liability policy. The subcontractor complies. An employee of the subcontractor is later injured on the worksite and brings suit against the general contractor for failure to maintain a safe premises. The general contractor seeks coverage as an additional insured under the subcontractor's policy. The subcontractor's insurer declines coverage because it asserts that the general contractor's liability clearly did not arise out of the subcontractor's work, as required by the additional insured endorsement. Coverage litigation ensues, often brought by the general contractor's own insurer seeking to shift its liability to

the subcontractor's insurer. The insurer for the subcontractor frequently loses this case because the court concludes that coverage for the general contractor, as an additional insured under the subcontractor's policy, is not precluded by a finding of negligence (even sole negligence) on the general contractor's part.

The number of cases that follow this pattern are too numerous to count. While last year's decision by the New York Appellate Division in *Chelsea Associates, LLC v Laquila-Pinnacle* is simply another one that can be added to this long list, its timing makes it significant.

First, a quick look at *Laquila-Pinnacle*, followed by the timing issue. *Laquila-Pinnacle* was a concrete subcontractor that had been hired by Turner Construction Company, the general contractor on a high-rise apartment project. As required by its contract, *Laquila-Pinnacle* procured general liability insurance naming Turner as an additional insured. A laborer employed by *Laquila-Pinnacle* commenced an action against Turner, among others, for injuries sustained when, en route to his work, he tripped on plywood being used as a temporary ramp near the entrance to the job site. *Laquila-Pinnacle* at 740.

The additional insured endorsement contained in *Laquila-Pinnacle*'s policy was a common one and provided as follows:

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" performed for that insured by you or on your behalf. *Laquila-Pinnacle* at 741.

The majority concluded that coverage for Turner as an additional insured was afforded under this coverage grant. The court stated: "It is further undisputed that (*Laquila-Pinnacle's* employee) was injured as he was entering the job site, en route to his work assignment. The 'contract could not be performed,

of course, unless (the subcontractor's) employees could reach and leave their workplaces on the job site,' and therefore the 'instant injuries, occurring during such a movement, must be deemed as a matter of law to have arisen out of the work.' Any negligence by the Turner group is not material to an additional insured endorsement." *Laquila-Pinnacle* at 740-741.

The dissent, making the common counter-argument to decisions like this, stated that the majority's decision improperly focused not on the cause of the accident but upon the general nature of the operation in the course of which the injury was sustained. "[S]uch an interpretation reads out of the clause the key words pertinent to its application here: 'but only with respect to liability arising out of '[*Laquila's*] work.'" *Laquila-Pinnacle* at 742.

Now, a word about the timing of this New York Appellate Division decision. In July 2004, Insurance Services Office, Inc., in an effort to stem the tide of unintended additional insured coverage, introduced changes to its various additional insured endorsements. At the heart of these changes was the preclusion of coverage for an additional insured's sole negligence—something that many courts around the country, based on the language of certain previous ISO endorsements, have not hesitated to provide. ISO set out to eliminate coverage for an additional insured's sole negligence by amending its endorsements to specify that coverage is only available for their vicarious or contributory negligence (when the named insured is also one of the negligent parties). The amended language of the additional insured endorsements provides in relevant part as follows (ISO Form CG 20 10 07 04) (underlined text added and bracketed text deleted):

Section II—Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the

Continued on page 6

Clear Eye for the Claims Guy

Continued from page 5

Schedule, but only with respect to liability [arising out of your ongoing operations performed for that insured] for “bodily injury,” “property damage” or “personal and advertising injury” caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf; in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

Laquila-Pinnacle is precisely the situation that the new additional insured language is intended to address. The opinion confirmed that *Laquila-Pinnacle*, the named insured, played no part in the laborer’s injuries. As a concrete subcontractor, it was obviously not responsible for the placement of plywood used as a temporary ramp that led from the sidewalk to the building. Thus, under the amended additional insured endorsement, Turner, an additional insured, would not have been afforded coverage from its subcontractor’s insurer because the “bodily injury” to the laborer was *not caused, in whole or in part, by Laquila-Pinnacle’s acts or omissions* in the performance of its ongoing operations for Turner.² It hardly seems unfair for Turner to be denied coverage under *Laquila-Pinnacle*’s policy and have to look to its own policy. After all, Turner played a part in the cause of the injury and *Laquila-Pinnacle*’s insurer likely received no premium, or very little, to name Turner as an additional insured.

Despite the fact that ISO has amended its additional insured endorsements to limit coverage for an additional insured to its vicarious or contributory negligence, insurers—likely for various reasons—are sometimes slow to incorporate new forms into their underwriting practices. Not that there hasn’t been enough writing on the wall for insurers to see that the use of additional insured endorsements that contain an “arising out of” trigger places them at real risk for providing free coverage for potentially huge losses,

Laquila-Pinnacle will perhaps be the push that some need to make certain that they are now using the July 2004 version of ISO’s additional insured endorsements. And, if not, there are a dozen more reasons—all from 2005 alone.³

BP America, Inc. v State Auto Property & Casualty, 2005 Okla. LEXIS 65.

In *BP America*, the Supreme Court of Oklahoma answered certified questions from the Northern District of Oklahoma concerning the meaning of the phrase “any insured” contained in the Auto Exclusion of a commercial general liability policy. The exclusion at issue provided as follows:

This insurance does not apply to:

g. Aircraft, Auto Or Watercraft

“‘Bodily injury’ or ‘property damage’ arising out of the ownership, maintenance, use or entrustment to others of any ... ‘auto’ ... owned or operated by or rented or loaned to any insured. Use includes operation and ‘loading or unloading’...”

BP America at **3.

The court provided a sparse (and somewhat confusing) description of the facts of the underlying litigation. *BP America* was listed as an additional insured under a general liability policy issued to a construction company. A construction company employee was driving a dump truck that was involved in a multi-car accident resulting in several fatalities. *BP America* sought coverage under the general liability policy. The CGL insurer presumably declined to provide coverage on the basis of the policy’s Auto Exclusion.

BP America argued that only negligent insureds should be denied coverage. Since the construction company, and not *BP America*, was responsible for the accident, *BP* argued that the Auto Exclusion, which precludes coverage for “bodily injury” arising out of the ownership, maintenance, use or entrustment to others of any “auto”

owned or operated by or rented or loaned to *any insured*, did not apply to it. The textual argument for *BP*’s position was that “any,” as used in the Auto Exclusion, should be read not to mean “all,” but, rather, “the.” The insurer countered that the Auto Exclusion “cannot be interpreted to allow coverage to an innocent insured when all automotive liability coverage of any insured is specifically disallowed.” *BP America* at **11. The Supreme Court of Oklahoma sided with the insurer:

The overwhelming number of courts, addressing policy language similar to that at issue here, determines, as a matter of law, that the term “any insured” in an exclusionary clause is unambiguous and expresses a definite and certain intent to deny coverage to all insureds—even to innocent parties. These jurisdictions recognize that to impose liability on the insurer would raise coverage where none was intended and no premium was collected.

BP America at **11–**12. “Furthermore, adopting the position advanced by the insured would require that we unilaterally convert a general liability policy—without motor vehicle coverage—into an automotive liability policy. This we will not do.” *BP America* at **18.

The *BP America* court next addressed whether the inclusion of a severability clause in the liability policy renders the Auto Exclusion ambiguous. The policy’s severability (“Separation of Insureds”) clause provided as follows:

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately as to each insured against whom claim is made or ‘suit’ is brought.

BP America at **20.



BP America argued that, even if the Auto Exclusion is clear when read in isolation, the inclusion in the policy of a severability clause renders the exclusion ambiguous. “The assertion rests on an argument that if, under the severability clause, each insured is treated as having a separate policy, only the negligent insured should be denied coverage.” *BP America* at **21.

While noting that the majority/minority split is not as dramatic on the severability issue as the interpretation of the exclusion, *BP America* nonetheless concluded that “most courts addressing the issue of whether a severability clause will render a clear and unambiguous exclusionary provision doubtful determine that the clear language of the exclusion must prevail.” *BP America* at **26.

Failure to so hold results in the specific terms of the exclusionary clause being overridden by a more general severability provision. Furthermore, it requires the court to ignore and treat as superfluous, the term “any” in the policy language. It also ignores the purpose of the severability clause—to afford each insured a full measure of coverage up to the policy limits, rather than to negate bargained-for and plainly-worded exclusions.

BP America at **24. The majority view is that, in the context of exclusionary language relating to “any insured,” the severability clause’s only effect is to alter the meaning of the term “the insured” to reflect who is seeking coverage. *BP America* at **26.

Cases that address the distinction between the phrases “any insured” or “an insured” and “the insured,” as used in a policy exclusion, are not unique, as evidenced by *BP America* citing nearly 60 of them from around the country in reaching its decision. And as for the potential effect of a policy’s severability clause on the exclusion, *BP America* cited approximately 50 cases nationally. Obviously, these are staggering numbers of cases to be cited by a court in its analysis of a single issue. Therein lies the significance of the Supreme Court of Oklahoma’s decision in *BP America*.

The phrase “any insured” is seen in a variety of policy exclusions. As a result, the question whether an exclusion containing this phrase applies to so-called “innocent insureds” arises with regularity. But despite the exclusion’s clear meaning, some insurers might still eschew coverage litigation when their case rests on the seemingly technical distinction between the phrase “any insured” and “the insured.” Not to mention that all policyholders speak Latin and are quick to invoke *contra proferentem*—the rule of construction that if the policy language is ambiguous, it must be construed against the insurer, as its drafter. However, given the results of the comprehensive survey of this issue undertaken by the Supreme Court of Oklahoma in *BP America*, some insurers that were otherwise hesitant to pursue litigation based on this distinction may now be more comfortable doing so.⁴

***Hooters of Augusta, Inc. v American Global Insurance Company*, 2005 U.S. App. LEXIS 26765 (11th Cir.).**

Junk faxes cause insurance coverage disputes. That much is clear. Whether they cause “advertising injury” is much less certain. The availability of coverage for liability for sending junk faxes (i.e., violating the Telephone Consumer Protection Act) under the “advertising injury” portion of a commercial general liability policy has been the subject of numerous decisions since 2002. Courts have bounced back and forth on this issue.

Hooters was not the most significant junk fax coverage decision handed down in 2005. In fact, from the standpoint of potential precedent, it was arguably the least significant. However, because it was the latest decision at the time of this writing, it was selected to demonstrate the current state of this coverage issue.

The court addressed coverage for *Hooters* for its liability for sending unsolicited fax advertisements in violation of the Telephone Consumer Protection Act (TCPA), 42 U.S.C. §227. *Hooters* had purchased advertising space on weekly flyers faxed to a database of Atlanta businesses. One of the faxes was sent to an Augusta attorney. He sued *Hooters* for violation of the TCPA and was granted class certification. The TCPA made it unlawful “to use any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine.” The TCPA allowed for an award of \$500 in damages for each violation, trebled, in the court’s discretion, if the defendant willfully or knowingly violated the statute. *Hooters* at *2-*4.

A jury returned a verdict against *Hooters* for knowingly and willfully violating the TCPA. The court exercised its discretion to treble the damages and entered judgment against *Hooters* for nearly \$12 million. Following a settlement that reduced the judgment to \$9 million and certain procedural maneuvers that led

Continued on page 8

Clear Eye for the Claims Guy

Continued from page 7

to the coverage litigation, the district court found coverage and entered a final judgment in the amount of \$5 million (the policy limit) plus post-judgment interest. *Hooters* at *5-*6⁵.

The Eleventh Circuit addressed whether Hooters's TCPA liability qualified as "advertising injury," defined in relevant part under an umbrella liability policy as "oral or written publication of material that violates a person's right of privacy." *Hooters* at *7. The court held that it did:

American Global first argues that Hooters's conduct violated no right of "privacy" because a fax sent in violation of the TCPA would not constitute a common-law tort for invasion of privacy under Georgia law. American Global's reading may be one reasonable interpretation, but, undeniably, it is at least as reasonable to interpret "privacy" more broadly to include aspects of privacy protected by other sources of law, including state privacy statutes and federal law. Indeed, the statutory notion of being free from intrusive and unsolicited facsimile transmissions is at least arguably embodied in the common law right to privacy under Georgia law. An essential element of the right to privacy, Georgia's courts have recognized, is "the right 'to be let alone,'" or "the right to seclusion or solitude." Notably, the insurance policy contains no language explicitly limiting the scope of the term "privacy" or, for that matter, alerting non-expert policyholders that coverage depends on the source of law underlying the relevant privacy right.

Hooters at *9-*10 (citation omitted).

While the *Hooters* court did not address whether invasion of privacy means violation of a right to secrecy of personal information or intrusion into a private domain, this is the issue on which TCPA coverage decisions often turn. For this reason, *Hooters* is unlikely to carry as much weight in the future as such decisions as *Capital Associates* and *Swiderski Electronics*, where this issue was addressed.

Tort reform advocates are fond of pointing out that the asbestos system is run amok because most of the plaintiffs are *not truly injured*. Not truly injured. It doesn't get more *not truly injured* than plaintiffs in an underlying TCPA suit. But as long as insurance dollars are available to fund statutory damages under the TCPA, there is no reason to expect this make-believe tort to go away anytime soon. Speaking of which, ISO has responded to this license to print money by adopting Form CG 00 67 03 05, which excludes coverage for advertising injury arising out of violation of the TCPA, CAN-SPAM Act of 2003 or any statute, ordinance or regulation that prohibits or limits the sending, transmission, communication or distribution of material or information.

Incidentally, while preparing the write-up of this case, I took a peek at Hooters's web site (for research purposes) and found an interesting position statement by the company in defense of criticism that its business concept exploits women. The company states, in part: "Claims that Hooters exploits attractive women are as ridiculous as saying the NFL exploits men who are big and fast. Hooters Girls have the same right to use their natural female sex appeal to earn a living as do super models Cindy Crawford and Naomi Campbell. To Hooters, the women's rights movement is important because it guarantees women have the right to choose their own careers, be it a Supreme Court Justice or Hooters Girl." www.hooters.com/company/about_hooters. It certainly isn't everyday that one sees the words *Supreme Court Justice* and *Hooters Girl* in the same sentence. ■

Endnotes

1. From the jokes page on qualityininsurance.com.
2. In *Dillon Companies, Inc. v Royal Indemnity Company*, 369 F. Supp. 2d 1277 (D. Kan. 2005) the court interpreted the phrase "acts or omissions" in a manner that suggests that even the use of ISO's July 2004 additional insured endorsements is no guarantee that

disputes over this issue will not continue.

3. *American Casualty Co. v General Star Indemnity Co.*, 125 Cal. App. 4th 1510 (2005); *Garamendi v Golden Eagle Insurance Co.*, 2005 Cal. App. Unpub. LEXIS 7082; *AIU Insurance Company v Clarendon America Insurance Company*, 2005 Cal. App. Unpub. LEXIS 2285; *LaFarge Midwest v Frankemuth Mutual Insurance Co.*, 2005 Mich. App. LEXIS 1947; *Mikula v Miller Brewing Co.*, 701 N.W.2d 613 (Wis. App. 2005); *City of St. Paul v Penn-America Ins. Co.*, 2005 U.S. Dist. LEXIS 14975 (D. Minn. 2005); *Ingalls Shipbuilding v Fed. Ins. Co.*, 410 F.3d 214 (5th Cir. 2005); *Meridian Mut. Ins. Co. v Cont'l. Bus. Ctr.*, 2005 U.S. Dist. LEXIS 6406 (E.D. Pa. 2005); *Dillon Cos. v Royal Indem. Co.*, 369 F. Supp. 2d 1277 (D. Kan. 2005); *Landpen Co., L.P. v Maryland Casualty Co.*, 2005 U.S. Dist. LEXIS 2145 (S.D.N.Y. 2005); *Koala Miami Realty Holding Co. v Valiant Ins. Co.*, 2005 Fla. App. LEXIS 14844; and *Roy Anderson Corp. v Transcon. Ins. Co.*, 358 F. Supp. 2d 553 (S.D. Miss. 2005).
4. For an example of another decision from 2005 that addressed the phrase "any insured," as well as the impact of a severability of interests provision, see *United National Insurance Company v. Union Pacific Railroad Company*, United States District Court for the Southern District of Texas, No. H-04-0614 (May 27, 2005, Memorandum and Order) (employee exclusion).
5. The Eleventh Circuit reversed the district court's conclusion that the policy provided coverage for post-judgment interest. The court concluded that the obligation to pay post-judgment interest was tied to the duty to defend, which, for American Global, never materialized, because the underlying litigation was already concluded when the primary coverage was exhausted. *Hooters* at *24-*28.

What Does It Take to Be a Professional Claims Negotiator?

by Ken Carmichael, CPCU



■ **Ken Carmichael, CPCU,** has been a State Farm Auto employee for 13 years and was a State Farm National Catastrophe Employee for 18 months. While on the Catastrophe Team, his responsibilities included estimating, investigating, and settling first party property damage claims for both the Auto and Fire (passed fire certification test) companies. During his 18-month commitment, he worked approximately 300 storm days-12 hours a day, six days a week. Currently he is responsible for resolving first party auto property damage claims, first party auto liability injury claims, first party medical pay claims, and third party property damage and injury claims through his work queues. Also, he handles first party loss of earnings claims, accidental death and dismemberment losses, and temporary total disability cases.

He serves on the Claims Section Committee, is a sub-committee member for the Claims Section web page, and is a member of the CPCU Society's Michiana Chapter.

Which scenario is scarier? An adjuster attending a court ordered mediation session for a 3rd party bodily injury liability claim or an adjuster having to tell their supervisor they forgot to take a Non Waiver Agreement regarding a permissive use question in which the driver caused \$20,000 worth of property damage?

In today's global, ultra competitive business environment, one has to be a skilled negotiator to be successful.

Usually, an adjuster will eventually have to appear in person at a court ordered mediation involving several different attorneys, a mediator/or arbitrator, and the injured party (or parties) without management. As the adjuster, you are required to convey the insurance company's range of values in a timely and fair manner. The court appointed mediator will be challenging the adjuster to settle the claim to keep their conflict resolution success rate high for future business and the plaintiff attorney will obviously do what it takes to maximize the value of their client's claim.

How do you get people to understand your company's point of view? The old adage applies for face to face negotiations; you must practice regularly to be a successful barterer.

There is a negotiation tape I listen to on a regular basis. It was developed by Gerard I. Nierenberg. He stresses the following for successful negotiations. "Do your homework and be prepared."¹ Therefore, it is important to know the claim inside and out. A skilled negotiator should try to find out how the plaintiff attorney negotiates, what mediator is selected by the parties, what judge is involved, what is the likely make up of the jury pool, are the medical providers credible, and what type of witness will the plaintiff make? "Preparation is a continuing ongoing life process that

you have to constantly prepare for the fact you are negotiating all the time. If you do your homework you will have a reasonable solution to problem solving."² Good problem solving skills will lead to successful conflict resolution.

Gerry Spence's *Argue and Win* book has significantly improved my negotiation skills. Spence is a successful criminal and civil trial attorney. His book was on *The New York Times*' best seller list for several weeks. He has 10 tips for successful negotiations—The Laws of Arguing:

1. Everyone is capable of the winning argument.
2. Winning is getting what we want, which also means helping others get what they want. This logic follows Steven Covey's fourth habit of highly effective people: think win/win.
3. Learn that words are weapons and can be used hostilely in combat.
4. Know that there is always biological advantage of delivering the truth.
5. Assault is not an argument.
6. Use fear as an ally in public speaking or in argument. Learn to convert its energy.
7. Let emotions show and don't discourage passion.
8. Don't be blinded by brilliance.
9. Learn to speak with the body. Sometimes the body speaks louder than words.
10. Know that the enemy is not the person with whom we are engaged in a failing argument, but the vision within ourselves.

I have these "Ten Laws of Arguing" taped on my work cubicle.

Continued on page 10

What Does It Take to Be a Professional Claims Negotiator?

Continued from page 9



I focus on law numbers 4 and 6 often. For example, the next time when you have a low velocity auto impact or a slip and fall claim with severe injuries being claimed, the adjuster can instruct the defendant's attorney to focus on law #4 when deposing the treating doctor: "Doctor, is it really possible for the plaintiff to sustain a herniated lumbar disc in an impact less than 5 mph?" If the treating doctor says yes, the defendant's attorney can contest the truthfulness of the doctor's assessment based on the preponderance of the evidence. With regards to law #6, fear is a normal feeling. In today's competitive business environment, failure is not a pleasant option. However, it does happen once in awhile (e.g., you took a claim to trial and a jury disagreed with your company's position). When you fail, learn from it. The only failure is if you do not try in the first place. Attorney Spence uses locks (i.e., the fear of failure) and keys (how to unlock fear) scenarios throughout the book. Also, he talks about a variety of relaxation techniques in his book which helps you deal with the anxiety of possible failure before negotiations take place.

Attorney Spence has another key component in negotiations: "to win, we must be believed, to be believed we must be believable, to be believable, we must be truthful." Being truthful is the essence of credibility. This logic follows Law #4. You cannot be a good negotiator if the people you are dealing with do not view you as being credible or truthful.

Listening skills are highly underrated in the negotiation process. Attorney Spence points this out in his book and Stephen Covey discusses good listening skills as part of his 7 Habit system—"Seek first to understand, then to be understood." The 80/20 rule applies with regards to listening skills. Talk 20 percent of the time, listen 80 percent of the time.

The art of compromise is sometimes lost in difficult negotiations. Is it really worth it to argue over \$500 when the probable trial outcome is less than 50 percent in your company's favor? Steven Covey discusses emotional bank accounts in *The 7 Habits of Highly Effective People*. Is this \$500 dispute going to cause a negative emotional bank account with this plaintiff attorney for future reference? I would say yes. Also, your company's client will have to take time out of their busy schedule to attend the trial over a \$500 dispute. When the mediation appears to reach a stalemate "know what your company's best alternative to a negotiated agreement (BATNA) is, and also, the worst alternative to a negotiated agreement (WATNA), so that you can decide what the parameters of a negotiated agreement should be. How can you be ready to negotiate, if you do not know your company's best and worst alternatives to a settlement? You must have a fallback position so that you can evaluate whether or not your client should continue on with mediation."

Nierenberg advises a successful negotiator has many attributes. **"A successful negotiator is flexible.** They establish mutual goals and interests. They do not try to persuade their opponent's views are wrong and should be changed.

They present creative alternatives that will meet their opponent's needs. And they reach their personal goals while simultaneously making a meaningful contribution to the goals of the organization and society which they live." Negotiations should not be painful but rather an opportunity to prove your skills and to resolve the conflict at hand on behalf of your company. Both Spence and Covey preach you have to think win/win and have the abundance mentality at the start of the negotiation process.

The Internet has a multitude of web sights for strengthening negotiations skills in addition to other media. Here are some of the major web sites bookmarked on my desktop: www.negotiatelikethepros.com, www.everyonenegotiates.com, and www.negotiate.com.

I hope this article helps you with your future negotiations! ■

Endnotes

1. Gerard I. Nierenberg, *Art of Negotiations* (Random House-Sound Editions, 1984-1985)
2. Gerard I. Nierenberg, *Art of Negotiations* (Random House-Sound Editions, 1984-1985)
3. Gerry Spence, *How to Argue and Win* (St. Martin's Press, 1995).
4. Gerry Spence, *How to Argue and Win*, (St. Martin's Press, 1995) p 48.
5. Stephen Covey, *Seven Habits of Highly Effective People* (Fireside, 2003).
6. See <http://www.mediate.ca/lawyersrole.htm#batna> last visited November 2005.
7. Gerard I. Nierenberg, *Art of Negotiations* (Random House-Sound Editions, 1984-1985).

Ten Tips for Negotiating With Plaintiff Attorneys

by Jonathan Stein, J.D., CPCU



■ **Jonathan Stein, J.D., CPCU**, is a plaintiff's attorney in Sacramento, CA, as well as a board member of California Young Lawyers Association.

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

Stein now is the principal of the Law Offices of Jonathan G. Stein where he also does expert witness work. You can contact him at jonathan@jonathangstein.com.

For bodily injury adjusters, one of the most important parts of the job is negotiating the settlement. Most adjusters start their career by handling unrepresented claimants and, through this, they learn basic negotiating skills. As adjusters progress and gain experience, in theory they learn to negotiate with attorneys. However, the skill set for negotiating settlements with attorneys is a different skill set, and one that, in my experience, is not taught to adjusters.

This article is not going to give you any deep dark secrets. I am not here to tell you how to settle claims for less money than they are worth. (Incidentally, I do not think that is your job. I think your job is to settle each claim for what it is worth and adjusters should not try to lowball any settlement.) I am not going to divulge any methods or strategies used by the plaintiffs bar. At the same time, I am not going to tell you to start at X percentage of your actual authority. I am not going to suggest that you leave a little money in your pocket to make sure you can settle the claim. Those are things you can learn in any book.

Rather, **the point of this article is to give you tips on changes in how you approach the settlement that will make a difference.** These ideas come from my experience as an adjuster and as a plaintiff's attorney. Its cultivated from talking to other attorneys about their experiences, their settlements, and their times when they could not settle claims with adjusters. I hope this gives you some insight into what we as plaintiffs attorneys are looking for when we try to resolve claims with you.

First, and foremost, do not refer to the attorney's client as claim number 10000X69548312-B. There are a number of reasons for this. If you are calling the attorney and refer to your claim number, that does not help the attorney at all. We do not keep track of our clients by claim number, and especially not by your claim number. Further, as a plaintiff's

attorney, we represent clients, not claim numbers. I know adjusters have a lot of files (I had more than 300 at many times in my career), but people are people and should be referred to as such. Every claims system that I have ever seen allows for the adjuster to index a claim by claimant's name. If the attorney calls and wants to talk about Bill Jones and you do not know which file that is, politely ask the attorney to hold a second while you pull the file, and then index it. You will go a long way toward getting the attorney's respect—a vital tool in trying to settle a case.

Second, do not nickel and dime me to death. Adjusters who make \$25 or \$50 moves in a negotiation do not strike me as adjusters who have any idea as to what they are doing. All it says, in big bold letters, is **"I DO NOT WANT TO SETTLE THIS CLAIM."** Why? For starters, it usually shows inexperience. It also shows an adjuster who does not seem to understand the process. I have actually had adjusters make a \$25 move in a negotiation. It is at that point that I tell my client we are better off filing and serving and dealing with defense counsel. It is not your money—do not act like it is coming from your personal checkbook.

Third, stop with the attitude that "I control the money so you must do what I say." For example, I have an active, ongoing claim where an adjuster refuses to talk about settlement without a signed medical authorization. Sure, it would be nice to have the signed authorization, but, in this case, for a variety of reasons, its not going to move us any closer to settlement. In this case, the client treated at a tribal medical facility that does not recognize the medical authorization. Further, the client is a six year old who lost a finger. I can assure the adjuster that there are no other times when the client lost this particular finger. However, the adjuster refuses to even talk about settlement until she receives a signed authorization. Instead of trying to work out some type of solution to get what she needs, she

Continued on page 12

Ten Tips for Negotiating With Plaintiff Attorneys

Continued from page 11

has upset my client and his parents, who now only want to file suit. The adjusters attitude has forced my hand.

Fourth, and this goes back to item one, treat the attorney like a real person. It is so frustrating to receive a phone call from an adjuster and hear “Hi, I am looking for Attorney Stein. This is Susie at Insurance Company ABC regarding claim 123456. I can offer you \$250 for your client.” There are so many things wrong with that, its hard to pick a starting point. But, call me Jonathan or Mr. Stein—not Attorney Stein. Attorney is not my name, its my profession, Claims Adjuster Smith. Also, talk to me like a real person. “Hi Mr. Stein. How are you today?” The adjusters that do that, such as an adjuster at 21st Century, are the ones who win points with me.

Fifth, and yes, I like lists, don’t treat me like a moron. This is the classic situation and it applies to two categories of attorneys. Older attorneys are treated like they have no idea what is going on in the courtroom these days. Adjusters call them and try to explain to the attorney what juries are doing and what the “new research” shows. Most of the older attorneys I know have seen more cases than most adjusters. Show them some respect.

On the other end of the spectrum, younger attorneys are treated like we have never seen a claim in our lives.

I am surprised at the number of times adjusters tell me, in their words, “You don’t know what you are doing.” And if that is their attitude, that is fine. But it gets us no closer to resolving a claim. Treat me like I know what I am doing, because I do. (I admit that there are some plaintiff’s attorneys who do not know what they are doing, but in my time as an adjuster, we had a list of who those people were and we shared it. If someone is on that list, fine, treat them that way. But if they are just new to you, treat them appropriately.)

Sixth, cut the attorneys some slack. Fair is fair and we all have to work together. If you are having a bad day and I just pushed you over the edge, but upon reflection you think you overreacted, call me and apologize. That goes a long way. Chances are that you may take me from being all ticked off and looking for a way to stick it to you, to someone who understands and may be willing to settle again.

Seventh, if you know a treating doctor is a fraud, tell me. Don’t beat around the bush and try to see if I know the doctor is a fraud. If I knew (and this goes for most plaintiff’s attorneys), I would not be anywhere near the claim or the doctor. If you can **prove** my client is a fraud, do so. But if you have any doubts, don’t call my client a fraud. It annoys me and makes me want to prove you wrong. In turn, I fight harder.

Eighth, if you know the case will not settle, tell me. There is an Allstate adjuster in Sacramento who I routinely do not settle cases with. He handles a large number of MIST cases and he gives me the company line. However, he also tells me up front, upon receipt of my letter of rep, that the case will not settle. I have a lot of respect for this adjuster and I tell my clients that. He and I have a difference of opinion on the value of these cases, but it makes some of the other cases easier to settle because I believe him when he gives me information.

Ninth, do not pretend you have authority to do something if you do not. Do not negotiate with me when you have no authority. Just tell me that. Do not have ask to mediate a case and then go in and tell me you cannot offer any more money. Do not demand a ton of detailed records and then tell me you have a minimum limits policy. If you do not have authority or cannot resolve a case because of your authority, just let me know up front.

Tenth, have fun with your job. Too many adjusters seem tired, overworked, and bored. It can be a difficult job. It can sour you on people. It distorts your perception of people. But its your job. It is not your life. Do not be defined by it. Understand that reasonable people can disagree about a case, its value, liability, etc. . . . Its not the end of the world. When an attorney makes a joke, laugh. Do not take yourself too seriously. Do not think that the world will turn based on this claim. It is not personal. We advocate for our clients, you advocate for your insureds. But there is no reason we can’t enjoy what we do and the people we work with on a regular basis.

Adjusting claims requires the adjuster to be a bit of a chameleon. You have to change your skill set on every claim. Its not an easy job. But, it can be a lot easier with the respect of the plaintiffs bar. These 10 steps, while not a solution to every problem, will go a long way toward gaining the respect of attorneys. Once you have that, you will have a much easier time resolving claims. ■



Task “Liposuction” Can Boost Claim Productivity!

by Kevin M. Quinley, CPCU, AIC, ARM



■ **Kevin M. Quinley**
CPCU, AIC, ARM,
is an authority on
adjuster productivity.
He is the author of
*Time Management for
Claim Professionals*
(www.nuco.com) and
nine other books.
You can reach him at
kquinley@cox.net or
at his web site, www.
kevinquinley.com

“**A**nd when exactly did I become the %&#@ bookkeeper?” asks the irate lawyer in a recent LexisNexis magazine ad, touting its CounselLink office management product. It promises to get attorneys back to doing what they do best—practice law rather than unrelated office functions. What a novel idea!

Adjusters can relate to this. Many of them might ask, “And exactly when did I become the %&#@ (fill in the blank) file clerk, go-fer, photocopy specialist, typist, collator, or travel agent?”

Alas, no product will instantly restore adjusters to do what they do best—adjust claims. Tasks that adjusters can do, but shouldn’t, are the cellulite of claim departments. Burdensome, quasi-adjusting work includes photocopying, filing, file retrieval, arranging business travel, collating, and fielding routine requests (e.g., “Can you please fax me a loss run?”) that could and should be

handled by others. “Others” might be clerical staff, support/administrative staff, CSR’s or the like. The latter are the claim department’s unsung heroes. We sing their praises and intend in no way to denigrate their roles.

Such job tasks are larded throughout the claims workload of many organizations. Quasi-adjusting may gobble as much as 10 to 15 percent of adjusters’ time—maybe more—in many claim departments. The “real” work of investigating claims, thoughtfully setting reserves, addressing customer needs, and negotiating settlements can take a back seat to clerical and administrative minutiae. Before you know it, adjusters are “majoring in minors.”

To be lean and efficient, company management (especially the claims management powers-that-be) must identify this situation, support adjuster efforts to trim distracting clerical work and refocus attention on productive adjusting activities.

Identifying Administrivia

Admittedly, quasi-adjusting tasks are tough to identify and define. No clear-cut definitions emerge. Instead, claim professionals should delineate high-value claims work from the tasks they are capable of doing but which have lower value. A claims department with a clear understanding of how it best contributes to a company’s success—combined with internal customers who share that understanding—will minimize quasi-adjusting.

Where does quasi-adjusting work come from? In some cases, company management fosters it. The problem accentuates when the claims unit is thinly staffed, with not enough people—especially support and administrative staff—to handle workloads. When an insurer no longer has enough people to handle workloads, higher-ups tend to make adjusters shoulder non-claims-handling tasks.

Thus, one step toward curbing quasi-adjusting tasks is identifying them. The most valuable work that adjusters and claim representatives do is investigating claims, dealing with policyholders and claimants, thoughtfully analyzing reserves and negotiating claim resolutions. These cannot get done if adjusters are tied up in meetings or standing over a photocopier for an hour trying to get a file copied so it can be assigned to outside counsel.

Is more technology the answer? Maybe not, as one claim executive put it:

Less technology would help. More clerical help would take the load off adjusters to allow them to do what they are supposed to do: investigate, evaluate, and settle claims. I don’t need an adjuster who can type. I need one who can climb a roof, evaluate a broken bone, write and read English!¹

Chastened adjusters may feel like they are little more than glorified file clerks. Pronouncements descend from On High about delivering platinum claim service or delivering superb financial results. Like Gulliver tied down by the Lilliputians, adjusters are hobbled from accomplishing these aims by the administrative tasks and dismiss these edicts as ivory tower musings by an out-of-touch home office.

It is virtually impossible to itemize every task that might be suspect. There may be gray area tasks that adjusters are good at or even enjoy because it gives them a “mental holiday.” However, this does not make the activity the best use of an adjuster’s time. Lower value work often includes sending faxes, typing letters, filing, retrieving files, completing routine forms, etc. Often what the adjuster does has the veneer of claims work. Scratch below the surface, though, and you find that it is really clerical/support duty.

Continued on page 14

Task “Liposuction” Can Boost Claim Productivity!

Continued from page 13

Value-Added versus Nonessential?

If a task seems suspect, ask yourself:

- Would the company hire an outside adjusting firm to do this work? If the company wouldn't think of paying an outside firm to do the task, an on-staff adjuster likely should not be doing it either.
- Could a person who has had no adjuster training handle the task just as well?
- How do other insurance company claim departments handle this work?

How does a claims department rout these time-wasters? Simply understanding and articulating the idea can help adjusters spot and sidestep less essential work masquerading as “the claim person’s responsibility.”

Insurance company management may fail to value adjuster time. The time of salaried claim adjusters appears to be free, so this resource can be squandered in low-value tasks. A fresh look might reveal just how much corporate resources are squandered in the endless meetings and administrative tasks that fill the adjuster’s workday. Instead of seeing adjuster salaries as sunk costs, insurance companies and claim departments should think in terms of opportunity costs.

Is Adjuster Time “Free”?

Responding to a recent *Business Week* cover story on overworked Americans, one reader offered a trenchant observation that applies to claim adjusters:

The 1990s rush to replace U.S.-viewed corporate liabilities (secretarial and clerical positions) with corporate assets (computers), so that one does his/her own file preparation, filing, address-keeping, letter-writing, voice-mail listening, etc. insidiously adds many hours of routine clerical tasks to almost everyone’s weekly routine.²



Of course, it is politically incorrect to suggest that the claims department hire more administrative and clerical staff. Further, adding staff is heretical toward the corporate mantra of being “lean and mean” and “doing more with less.” One insurance company CEO I know boasts that he does not have his own secretary. He sees it as a sign of egalitarianism and a “no perks” corporate ethos. True, but if he needs anything done, with the snap of his finger he can (and does) pull staff to drop whatever they are doing to photocopy, collate, or get out a needed mailing. He is proud that he books his own business travel online. (At an estimated yearly salary of \$200K, though, the broader question is whether this is a wise use of corporate assets having a CEO spending 20-minute chunks on Orbitz, booking his next Board Meeting flight.)

Another more in-depth approach involves asking the claim staff to track how they spend their time for four weeks. They should note all tasks that took more than an hour, listing them under five to seven categories. Then, they should indicate whether each task was a good, acceptable or non-productive use of their legal talent.

At the end of four weeks, hold a brief meeting. Discuss the assignments that may constitute “poor use” of adjusters’ time. Once claims people are aware of tasks that are inappropriate, they can start talking about alternatives. Revisiting this exercise every six months can help trim the quasi-adjusting flab.

Garnering Management Support

In drawing any lines or boundaries, the support from the top is essential. Without it, you may as well stay hunched over the photocopier while client and claimant calls pile up in your voice-mail queue. (*“I can’t come to the phone right now because I’m functioning as a de facto secretary. If you’ll leave your name and number, though . . .”*)

Other solutions:

- Show upper management how much more productive adjusters could be if they could delegate clerical-type work
- Hire more support/administrative staff
- Explore ways to shift non-claims-handling tasks to their lowest appropriate level of competence. Is photocopying, collating, or making business travel arrangements the best use of your time—or the company’s dollar—as a claims adjuster?

One constraint is that adjusters may not want to seem like prima donnas. In other instances, hiring freezes or staff cuts may mean there is more to do and fewer people to do it. In such cases, adjusters doing clerical work is a survival technique. Those mundane but all important tasks won’t get done. In other settings, adjusters may actually welcome such tasks because they are easy, routine, and more convenient than fielding the eighth complaint call from Mrs. Huffnagle wanting to know where her check is!

Boost the productivity of **your** claims unit by analyzing and paring these quasi-adjuster tasks! ■

Claims Run-Off with Class

by Jon Gice, CPCU, ARM, SCLA

■ **Jon Gice, CPCU, ARM, SCLA**, is a senior insurance executive with more than 25 years experience in the industry. He holds insurance designations of CPCU, ARM, and SCLA as well as insurance rehabilitation designations of CRC and CDMS. His primary focus has been workers compensation but more recently he spent time in alternative risk transfer business where he managed a large run-off business. He is a member of the CPCU Society's Connecticut Chapter and serves on their Board of Directors.

The Challenge of Run-Off

The insurance industry has seen its share of companies closing down operations. There have been numerous small- to mid-sized insurance companies who have closed down shop in the past decade. And who would have imagined that large billion dollar companies like Reliance, Fremont, TIG, and Royal & SunAlliance would close down operations as well? All of these discontinued insurance operations share the challenge of run-off as no company simply closes its doors with all its employees headed home that same day. Going into run-off requires planning and management to handle the departure of the business and the people who supported the business. The initial announcement of run-off produces the classic grieve response process. All personnel will experience emotions that range from shock, anger, denial, depression to final acceptance of the situation. Uncertainty reigns and the need for clarity is strong as humans don't handle the unknown very well.

While sales and marketing, loss control, and underwriting personnel head out the door fairly quickly, the claims staff remains for the long haul. Claims is clearly the "last man/woman standing" in the world of run-off. Planning and management is critical for all disciplines in run-off but it is particularly important to assure that the last man/woman

standing are there to finish the job. One of the strongest challenges of run-off is keeping claims staff on board and motivated when each person knows that they no longer have a career with their employer and they don't know when their last day of work will come. The calendar is shorter and a bit more predictable for property claims but the long tail of liability exposures and workers compensation claims makes the future far less than clear.

While there is no panacea for the handling of a claims run-off, this article will provide some tips from real life run-off experiences. These tips should provide direction and a sense of hope that a claims run-off can be handled with class.

Tip #1: Affirm the Mission

It all begins with clarifying the mission. Ongoing claim operations have a mission (at least they certainly should have) which might run along the lines of the following sample mission statement:

Our mission is to professionally handle claims with the highest degree of expedience, fairness, and integrity.

This mission does not change when run-off is declared! In fact the first step in managing a claims run-off is assuring that the mission is reinforced and understood more than ever. When run-off is declared there may be those claims handlers who see run-off as an opportunity to short cut proper claim handling processes, abandon claims to preserve a caseload, and/or overpay claims to reduce a caseload and so he or she can move on as quickly as possible. Each of these reactions are a clear violation of the mission and can't be tolerated in either an ongoing or run-off operation. Again, it is critical that all claims personnel understand that run-off does not mean abandoning what made the claims operation strong in the first place. Run-off means that the mission is more important than ever to be successful in managing claims to resolution and closure.

Tip #2: Set Key Performance Indicators

With a mission set, key performance indicators (KPIs) follow in order to accomplish the mission. KPIs assure accomplishment as the old adage truly works—what gets measured does get done. In an ongoing claims operation there is generally a balance between qualitative and quantitative indicators. An example of a qualitative KPI would be completion of a full investigation of causation and liability in each claim. An example of a quantitative KPI would be the number of percentage of closures.

During the first year of a run-off the KPIs that were in place for the ongoing operation should stay intact as there will continue to be a stream of new claims continuing to be reported to the operation. The claims operation will likely feel like not much has changed. New claims continue to arise since the insurance policies are just beginning the non-renewal cycle in this first year of run-off. But in year two and subsequent years new claims will diminish dramatically year to year and consequently the KPIs need adjustment as claims age. The indicators focused on up-front activity like proper investigation and evaluation of a claim diminishes and the indicators focused on back-end activity like settlement and subrogation become much more important. Yet the balance between qualitative and quantitative KPIs remains a priority. Moving toward pure quantitative indicators like claims closure is dangerous and violates the mission. Closure must be accomplished in an expedient manner but closures must be fair and concluded with integrity in order for claims to remain closed.

Tip #3: Measure Performance

Ongoing claim operations conduct claim audits regularly to measure KPIs to assure adherence to the mission as well as provide the opportunity to

Continued on page 16

Claims Run Off with Class

Continued from page 16

measure individual performance. A claim operation in run-off must continue the audit process as well. It is highly unlikely that the mission and the KPIs will be met without actual measurement and verification.

In year one of run-off the audit process will likely mirror the process that was in place while the claim operation was ongoing. Most often this audit process depends heavily on proper sampling of open and/or closed claims that are considered representative of the entire inventory of claims. A complete inventory audit would likely prove unfeasible due to the high volume of claims in an ongoing claims operation. In year two and subsequent years the goal of audit should be increasing the size of the sample as a percentage of open claims. The quicker a complete inventory review can be completed the better as this will make planning for staffing levels and ultimate loss reserves much more certain. Along the way, measurement provides an objective method for individual claim personnel performance appraisal. This appraisal is very important to tie into an incentive to stay on board as long as needed in the run-off operation.

Tip #4: Provide Incentive

There is a myth that claims personnel will have a natural incentive to stay with a company in run-off since they will have a job for years. Bust this myth! When the future is uncertain the wisest and strongest claim personnel will likely be the first out the door unless they are given an incentive to stay and handle the run-off. A compensation plan has to accommodate the need to retain the claims staff.

The compensation plan needs to be tied to performance so that the strongest claims handlers are truly compensated for doing their best. The more detail that can be developed around the compensation plan the better but do not build a plan that can not be fully funded. The compensation plan has to be budgeted as it would be most

demoralizing to build expectations that are not met. Companies who attempt to reduce unallocated loss adjustment expense and not recognize this need will pay the price in loss development. Failure to consistently handle each open claim aggressive typically results in losing control of claims driving loss costs upward. Penny wise does result in being dollar foolish in run-off when the value and the need to properly compensate is not recognized.

Tip #5: Communicate

As noted earlier, uncertainty prevails when a company declares run-off. The greatest antidote to uncertainty is clear concrete communication. Leaving people in the dark only sustains the emotions of anger and depression. The likelihood of voluntary turnover increases dramatically when staff are uninformed.

The single most often asked question by employees working in a run-off operations is this: When is my last day of work? While a direct answer to this question may not be feasible far better to provide an annual or quarterly target than no answer at all. It is wise to essentially let employees know that if there is a clear concrete answer to a question they will receive it. If there is not an answer let that fact be known as well as long as that is an honest reply.

Communication on meeting key performance indicators should be shared at least monthly. This will provide all employees with a sense of accomplishment and let them see progress in the run-off operation. Individual performance measurement should be shared at least biannually to assure that each employee knows where they personally stand particularly in regards to eligibility for compensation. Individual performance appraisal can provide concrete numbers that can be included in the claim handler's résumé—a highly valuable asset to take from a run-off experience.

Tip #6: Make it Fun

Run-off has the characteristics of a funeral. People will mourn the loss of the company and want to focus on the past fond memories of when the company was growing and staff was increasing rather than being reduced. Do not allow the funeral to persist! Little is gained looking backwards other than reinforcing feelings of anger, denial, and depression. Far better to look forward and make the best out of the opportunity ahead in running off the operation. If there was ever a time for “walk around” management, it is when an operation is in run-off mode. Talking with employees on a daily basis to keep them “pumped up” goes a long way. Usual employee parties around birthdays and holidays are more important than ever to keep a business as usual environment. If there is a social committee keep it alive and thriving. If there isn't one start it. And scheduled quarterly meetings to celebrate success around accomplishment of the KPIs are invaluable.

Claims Run-Off with Class

The skeptics will argue that run-off will be a disaster with people running out the door and claims becoming unmanageable. Fortunately the skeptics are not always on target. Planning and management can overcome what appears to be hopeless. Integrating the tips in this article are a good start to keeping the run-off operation from a potential disaster to making it a class act. ■

Katrina's Catastrophic Adjuster Teams

by Diane F. Fojt, MSc., and Janet Wagner, CMA

■ **Diane F. Fojt, MSc.**, is founder and CEO of Corporate Crisis Management, Inc. based in Tampa, Florida. Fojt and her team provide critical incident preparation, response and training services throughout the United States.

■ **Janet Wagner, CMA**, audits hospitals for the Medicare program at First Coast Service Options, an affiliate of Blue Cross Blue Shield of Florida. Her B.A. in Accounting was earned at the University of South Florida.

Claim adjusters generally aren't called into action when a policyholder is having a good day. However difficult the claimant and the situation, adjusters are expected to efficiently and effectively discharge their task.

Catastrophic Adjuster Teams ("CATs") are even more challenged as they collectively encounter throngs of policyholders whose day didn't go well. Generally very experienced, CATs are trained to deal directly and professionally with traumatized policyholders that have personally experienced loss, injury and even the death of a loved one. This hardy breed operates under stress with the expectation of very little downtime, and tolerate the logistical conditions brought on by loss of electrical power, running water, and local amenities. Team members can expect to go from normal-to-horrible conditions with just a few hours notice. Adaptability is their calling card.

Last summer, Hurricane Katrina gave them a call. Powered by the potent late summer kettle of warm water otherwise known as the Gulf of Mexico, Katrina charged ashore late last August with the finesse of the proverbial bull in a china shop. She plowed a 150-mile wide swath, five to six times wider than her famous cousin, Hurricane Andrew. With devastation upending the very infrastructure of the areas near landfall, whole cities and counties suddenly became inaccessible and inherently dangerous.

The Challenges of Disasters—Traumatic Stress

Disasters have many elements that impact survivors. Apart from being sudden and unexpected, their effect may be catastrophic to the population victimized. Chaos, confusion, fear, and resignation may follow. Extensive media coverage and opportunistic politicking may further a mentality of having been victimized, and may eventually annoy the impacted group. After all, they have collectively endured a magnitude, life-altering event and experienced traumatic stress.

Unlike those experiencing acute stress, which may occur after a minor fender-bender, or those experiencing cumulative stress, which builds up over time, those who encounter traumatic stress must deal with highly charged, extreme stressors. The traumatic stress induced by an overwhelming disaster can also result in vicarious traumatization by those who deal with the actual disaster victims but did not witness the events directly.

The loss of safe haven, uncertainty regarding the eventual outcome, and fears generated by inaccurate information and rumors are just some of the stressors facing disaster victims after an event. Even though they may have "prepared" for predictable disasters such as a hurricane, the particular damage or injury they incurred may have left them "short" of the one supply item they now need most. There's plenty to clean up, and not enough hands to do the work. The kids are home while hazards abound. Everyone is exhausted. "Normal" is a thing of the past.

CAT adjusters arrive with the expectation of stressful times, as they face long work hours, lack of sufficient sleep, skipped meals, and their own family issues. If multiple disasters have occurred sequentially, they face the additional challenges of extended deployment. There's the guilt of not being there for their own family's important events, particularly those once-in-a-lifetime events such as first steps, graduations, or

the birth or death of a family member. And the practical difficulties of living and working out of a hotel room week-in and week-out can be tiring.

Katrina Redefined Expectations

Hurricane Katrina set new standards for all parties.

The infrastructure that conventional emergency planning assumed as a "given," was just . . . gone. Roads, bridges, basic public utilities, and law enforcement were frequently incapacitated. FEMA, political leaders, and private relief agencies were initially stunned, as Coast Guard helicopters, quickly appearing and suddenly indispensable, plucked stranded residents from rooftops and operators of small water craft navigated streets-turned-canals in less televised New Orleans rescues.

Even though it was more immediately accessible, many a CAT deployed to nearby coastal Mississippi personally encountered unprecedented situations, having arrived on time (per standard protocol) to an environment not quite ready for their standard game plan of meeting policyholders, assessing damage, and expediently issuing settlement.

The landscape was so thoroughly littered with small remains of building materials that locating insured properties was truly ambitious. The actual location of residential streets, encumbered with debris and sand carried inland many miles by an impressive storm surge, was often not discernable. Eventually, bulldozed paths approximated roadbeds in some areas, but addresses were still elusive with so few street signs, mailboxes, and homes even partially surviving. If homeowners could be located, documenting their insurance coverage, and even their actual identity, was quite often impossible.

Continued on page 18

Katrina's Catastrophic Adjuster Teams

Continued from page 17



Health-wise, CATs faced many of the same dangers as emergency workers in the area. Abandoned and disoriented dogs had quickly organized into packs intent to defeat starvation. Puddles of water encountered as far as 10 to 12 miles inland were populated with fish and the occasional dolphin, dead and alive. Encounters with dead animal carcasses and the bodies of the deceased were common, not only during inspection of homes that had partially survived the storm, but even in treetops where the retreating storm surge lodged them.

Criminal activity also raised very real personal safety concerns for the CATs. Looters came out after dusk to rummage through the wreckage of homes and businesses, making nightfall dangerous; many were armed with firearms they had already lifted from pawnshops. Roadworthy vehicles of newly arrived relief workers were susceptible to hijacking or looting of now priceless fuel and tires, because so many residents' cars had suffered flooding or tire damage when traversing the initial storm surge debris. Local police, with many of their own vehicles and armory ruined by saltwater flooding, and many of their staff previously evacuated or now missing, commiserated with the general public's feelings of vulnerability and helplessness.

With appropriate accommodations scarce, many CATs reported that they felt a twinge of guilt upon entering their hotel lobbies at the end of the day, with conspicuous insurance company logos on their shirts, as they had to walk past the suddenly homeless who had been turned away at the desk. Even as the holidays approach, CAT work is still underway, a deployment prolonged past the anticipation of many.

Norms and Extremes

On duty, CATs with their above-average qualifications and "close the claim" mentality are adept at handling life-changing events. They are trained to listen to the story, slow down their own speech pattern, lower their tone, and give positive feedback to others as they extend their services to help effected policyholders. Katrina expanded the breadth of skills needed and exposed CATs to unprecedented on-the-job stressors.

Off duty time during a deployment is usually limited to one precious day of the week, when CATs try to get away from the area of deployment for a good meal out or the recreational activities they individually prefer. Jointly, CAT team members may take the time to visit nearby attractions. Katrina extremely limited the palette of choices for most CATs deployed. Even if safe passage out of the very large geographical area

effected could be had, the adjuster had to locate the fuel to get him back to his post. Power could be out for miles in any one direction, and amenities in fringe areas were frequently stretched to accommodate the victims, their own neighbors.

Families, having learned to be tolerant of a member's CAT duties keeping him or her out of easy communications and away from important events, were increasingly frustrated in the Katrina aftermath as strained communication facilities rendered logistically difficult once-a-week phonecalls a luxury. Watching extended media coverage in their own homes several states but a world away, families could only sit and wonder what their loved one was enduring.

CAT employers, normally equipped to mobilize the team, provide what is needed and let CATs know what to expect, were confronted with the same communication difficulties that the adjusters and their families faced. Like everyone involved, they too were overwhelmed with Katrina's unpredicted circumstances, however geographically and emotionally from afar.

Future Katrinas

Even more than it personally impacted human lives, 2005's Hurricane Katrina has significantly recast emergency planning models and assumptions for federal agencies, local authorities, private relief agencies, and others, including CAT teams and those who support their efforts.

Individually, CAT members should consider expanding their coping mechanisms, not overlooking the importance of socializing, physical exercise, and actually planning for the on-duty and off-duty activities they specifically find relaxing. Adequate organization in advance of deployments can also help to avoid secondary crises that occur when supplies are discovered to be short or inadequate in the field. Realistic expectations must be set for communications with families. After an event, CATs should talk with others

deployed about their experiences, to endeavor to look for the silver lining of the experience, and to plan for future events using the lessons that were learned.

Organizationally, employers need to recognize the importance of selecting stress-hardy individuals for CAT deployment. Additionally, pre-deployment education of catastrophic adjusters, their families, and their supervisors can impart stress management techniques and encourage healthy coping methods. During deployment, employers should arrange for 24-hour assistance to those deployed, and proactively facilitate communication with families at home. After deployment, the event should be “closed out,” with recognition of individual and team accomplishments, and stress debriefings before CATs leave their post.

Stress debriefings, aside from being a way to “empty the trash before going home,” are a good way to create a sense of cohesiveness in the CAT team, mitigate the effects of misinformation that may have occurred, recognize experienced members that have helped those newer, and diminish the impact of traumatic stress that has accumulated. There should be follow up with those deployed for input on how to improve the process in the future, based on the lessons just

learned. Employers should be aware that traumatic stress signs and symptoms can be delayed and appear weeks to months after the event is over.

Do Cats Really Have Nine Lives?

Katrina’s CATs may indeed feel that they have “cashed in” one.

Like those involved in other extreme life-changing events of massive scale, they have endured more than what was expected, for the benefit of others. Over time this can take its toll.

Catastrophic adjusters, those who aspire to this demanding role, and those who support CAT efforts from afar, need to properly assess the stressful demands of catastrophic adjusters and plan for adequate CAT support.

The bottom line is that very few can do the work that catastrophic adjusters do. Suitable backing for their own very personal and toilsome efforts will allow CATs to continue making that very appreciated difference to victims of future catastrophic events. ■



Claims Section Wins Gold for 2005 Circle of Excellence Submission

by Barbara Levine, J.D., CPCU



■ **Barbara Levine J.D., CPCU**, is founder and executive vice president/operations at ECN, LLC (Exam Coordinators Network), a nationwide, full-service IME/Peer Review vendor. ECN services claim departments, TPAs, nurse case managers, attorneys, hospitals, and corporations on medical case reviews. Levine has held positions with State Farm Insurance Company and AIB Financial Group; and has owned and operated a continuing education school licensed to provide instruction for adjusters who handle Florida claims. She is a member of the CPCU Society's Gold Coast Chapter and serves on the Claims Section Committee, the Society of Risk and Insurance Management, the Public Risk Management Association, and the Florida Bar Association; and is a licensed instructor for the Florida Department of Financial Services.

The CPCU Society's Circle of Excellence program recognizes both chapters and sections for their individual member's professional contributions to the insurance and financial service industries. The program was established to "spotlight" chapters and sections for their involvement in industry-related activities. The Circle of Excellence Awards are presented annually at the CPCU Society's Annual Meeting and Seminars. This year's meeting is scheduled for September 9–12, 2006. The Claims Section Circle of Excellence submission has to be finalized and sent in by June 1, 2006, so please, start sending in your individual activities!

There are three levels of awards for Circle of Excellence awards; Bronze, Silver, and Gold. The award level is based upon a points system wherein a certain amount of points are awarded depending on the type of activities submitted.

Activities must be consistent with the Society's "Strategic Plan" and are grouped as follows:

- I. *Make CPCU the most widely recognized, valued, and highly respected professional designation/brand in the property and casualty insurance industry.*

Suggested Activities:

- a. Build relationships with employers so that they see the increased value of having their employees actively participate in, and become members of, the CPCU Society.
- b. Adhere to the CPCU Society's code of ethics.
- c. Participate in public ethics public awareness activities.
- d. Be involved in the development of "best practices" in a variety of organizations in the property and casualty industry.



CIRCLE OF EXCELLENCE RECOGNITION PROGRAM

- e. Publish articles in both non-CPCU and CPCU or trade related publications.
 - f. Conduct joint meetings with other professional groups, i.e. RIMS.
- II. *All Society members should have access to a continually increasing number of programs and services that position them for success.*

Suggested Activities:

- a. Assist with meeting member and chapter demand for high-quality, unique technical programs and information on leading-edge topics in the property and casualty insurance industry by developing and presenting educational programs at a variety of venues.
- b. Create opportunities for CPCU members to network so that they have the best access to new and better job opportunities, as well as a forum to share case and career management advice.
- c. Participate in NLI programs.
- d. Conduct a workshop (An educational seminar or series of meetings emphasizing interaction and exchange of information among a usually small number of participants).
- e. Conduct a symposium (A meeting or conference for discussion of a topic, especially one in which the participants

form an audience and make presentations.) **Note:** Annual Meetings and Seminars are always looking for new and innovative programs.

- f. Publish articles or newsletters.
- g. Conduct a CPCU chapter meeting.
- h. Contribute information to your local chapter or the claim interest section's web site.
- j. Prepare a research paper.

III. Stewardship

Suggested Activities

- a. Participate in outreach program for national membership.
- b. Participate in a local chapter outreach program.
- c. Volunteer to staff a booth at the Annual Meeting (chapter or Section Booth).
- d. Staff the New Designee Open House at the Annual Meeting.
- e. Staff I-Day booths.

IV. Community

Life doesn't begin and end with our careers! Many of us engage in community service activities either through religious affiliations, our child's school, or just simply to "give back". Please report your civic involvement, including any official positions which you hold.

Important items to keep in mind regarding COE submissions:

- a. Be creative. An activity does not have to fit precisely into one of the categories listed above.
- b. Make submissions promptly and continuously throughout the year. The sooner you submit the activity, the less likely you are to forget it!!!
- c. You can "Double Dip!!" Your activities may be used toward **both** your special interest section and your local chapter's submission.
- d. Get to know your chapter or section's COE liaison. If your chapter does not have one, why not volunteer??

The time frame for completing activities eligible for submission runs from July 1, 2005 through May 31, 2006. Please refer to the submission form on the web site to obtain the specific information which you will need to provide.

We look forward to another wonderful year of active participation by all of our section members. We won't settle for less than another **gold!!**

Please be a part of the team and participate in this wonderful program. **Get the recognition you deserve! ■**



■ James D. Klauke, CPCU, AIC, RPA, (pictured fourth from the left) represented the Claims Section at the Circle of Excellence Luncheon held during the CPCU Society's 2005 Annual Meeting and Seminars. Klauke is pictured with representatives of the other 10 sections that qualified for the Gold Level, along with Donald J. Hurzeler, CPCU, CLU, (far left) 2004–2005 Society President and James R. Marks, CPCU, CAE, AIM, (far right) Society Executive Vice President.

What National Service Means to Us

by Marcia A. Sweeney, CPCU, AIC, ARM, ARe, AIS, with contributions from the Claims Section Committee members

In this article several Claims Section Committee members are sharing their thoughts and experiences in regards to their CPCU Society National Service. We hope that these comments will inspire and encourage you to join our ranks. Feel free to contact anyone one of us for further information, all our contact information can be found on the Claims Section web site. Keep in mind that the Claims Section is just one of the Society's 14 Interest Sections and that multi-line claims people may have an interest in serving on another related Section, or maybe even on a special ad hoc committee. Additional information and the application for National Service can be obtained on the CPCU Society's web site at: www.cpcusociety.org, then under the tab for Membership click on "Volunteer for Society Service".



Robert McHenry,
CPCU AIC, AIS

National Service:
Claims Section Committee
member and current
Chairman 2005-2008

Local Chapter: Northern Florida

"I volunteered to serve on the Claims Section Committee to expand my horizons beyond the chapter level. Our Claims Section members literally reside all over the country and we get to interact with all types of claims people in varying roles. I enjoy sharing a common bond with fellow members who are dedicated to aiding section members by providing educational seminars and the best newsletter. We also work with the Society to benefit all CPCUs. I was fortunate to be part of one of committees in presenting two seminars for the 2004 Annual Meeting and Seminars in Los Angeles. This involvement jump started my enthusiasm for committee work. At the 2005 Annual Meeting in Atlanta I was appointed chairman of the Claims Section Committee. From the personal rewards to the helping of others it all makes the effort worthwhile. It also doesn't hurt that we get to meet in a lot of great locations."



James D. Klauke, CPCU,
AIC, RPA

National Service:
Claims Section Committee,
Immediate Past Committee
Chairman

Local Chapter: Colorado

"As the immediate past chairman of the Claims Section Committee, I have had the honor to work with people in my line of work from coast to coast, literally. It has opened my horizons and encouraged me to participate above and beyond the level expected of my position. I have become a great volunteer and always find the time, mostly personal time, for the Society. I can not imagine becoming as successful as I have become in my career without the knowledge, associates, and friends I have gained from being a member of the CPCU Society. I truly believe that when I received my designation in my hometown of St. Louis in 1985, my career jump started the rest of the way up that ladder of success."



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

National Service: Claims
Section Committee,
CQ Editor

Local Chapter: Connecticut

"National service gives me the opportunity to volunteer with an organization that means a lot to me. Not only does it build my self esteem it also allows me to continue to develop new skills and strengthen others while networking with a well-respected group of insurance professionals. I received my CPCU designation 25 years ago (yikes, I actually put that in writing). In 1981 I became active in the local Connecticut Chapter and I have been active in the Society ever since. I worked on the Education, Bylaws, Candidate Development, and New Designee Committees and was on the Board of Directors for 12 years before applying for national service. The volunteers at the national level are well educated and

highly energized individuals from all insurance disciplines and from all across the country. They keep you motivated. When I was appointed to the Claims Section Committee in 2000 I was promptly asked to be the CQ editor—not that I have had any experience, but, because they had an opening and I had a desire to learn something new—so I agreed. Not only am I an active contributor to the yearly results of the Claims Section and helped them win the Sections Circle of Excellence "Gold" award for four years in a row, I am also on the Editor's Committee and work with that group of fourteen other section leaders, the *eJournal* editor, and the publishing staff in Malvern.

In short, my national service makes me happy! It is fun, it is personally rewarding, and it provides many opportunities to promote professionalism within the industry. I'm proud to be associated with all the professionals serving at the national level."



Tony D. Nix, CPCU, CIFI

National Service:
Claims Section Committee,
CPCU Journal Task Force

Local Chapter: Atlanta

"Over the last six years I have served on the *CPCU Journal* Task Force and the Claims Section Committee. I volunteered as a means to meet other professionals within the industry that are experts in different disciplines other than my own. The experience and insight I have gained has made me a more well rounded insurance professional. I have a better understanding of issues that affect our industry outside the arena of insurance fraud investigations. In addition, my participation in national service has allowed me to stay abreast of the changing environment and technology that our industry faces on a daily basis. This has been a positive experience for me and I recommend it to others. Thanks for the opportunity to share my thoughts with our membership."



**Barbara Levine, J.D.,
CPCU**

National Service:
Claims Section Committee
Local Chapter:
Florida Gold Coast

"When I earned my CPCU designation in 1996, I was happily employed with a large property and casualty insurer. I was motivated to obtain the designation by the possibility of greater career opportunities. I did not attend the conferment ceremonies, which were held that year. It was not until 2000 that I attended CPCU Society's Annual Meeting and Seminars. I attended alone, but quickly met several other CPCUs who were, like me, attending the meeting just "out of curiosity."

During the conference, I ran into former colleagues and friends I had long forgotten. It was truly wonderful to reconnect with these individuals. In addition, I gained much needed insight into the organization itself and the people who are involved in it.

Soon after, I applied for national service and was selected to serve on the Claims Section Committee. Attending my first "Mid-Year" meeting, I had no idea what to expect. Being "the new kid on the block," I felt everyone seemed to know one another except me!

In addition, the discussions which took place during the section meetings were on topics which were completely foreign to me.

I took a bold leap and began asking questions about the everything. What were the Claims Section's objectives? How did we go about achieving them? What did all of the acronyms mean? To my surprise, other members of the committee needed the same information.

I have now attended several meetings, both at the local chapter level and as part of the national Claims Section Committee. I realize that I had completely underestimated the benefits of being involved in such a great

organization. I have not only made great contacts, but have made great friends. Purely and simply, the people involved in this dynamic organization are some of the most interesting, successful, and entertaining people I have ever met. It has been and continues to be an honor to serve on the national level, and I hope to be a part of it for a long time to come."



**James A. Franz, CPCU,
AIC, ARP, ARM**

National Service:
Claims Section Committee,
past Claims Section
Chairman, Sections
Governor

Local Chapter: Northern Indiana

"I first became involved in national service at the recommendation of my regional vice president just at the time when I was finishing my term as local chapter president. I became a member of the Claims Section Committee and attended my first committee meeting in 1989. I was amazed to be serving on a committee consisting of vice presidents of claims of major insurance companies, independent adjusters, claims managers, consultants, and front line claims folks. It seemed the entire spectrum of claims professionals were members of the Claims Section Committee. I was getting to work with people I respected and admired. I am proud to say the same holds true to this day. Not one day goes by I am not grateful I was encouraged to volunteer for national service. While being a member of this talented group, I also learned new skills.

Each year the committee puts on Annual Meeting seminars and local symposia. Developing these programs improves your planning, marketing, and public speaking skills. We contact leaders in various fields that touch the claims industry. Medicine, law, and technology were just a few that come to mind. It is always a thrill to meet these leaders and work with them to provide a cutting edge program for our members.

We try to be creative in developing programs and products for our section members. For example, we wanted to be available to the first time attendees at annual meetings. We set up a breakfast for section members and passed out business cards for attendees to contact us for any questions or problems. This later evolved into the popular box luncheon program where attendees can network on an informal basis.

We developed the "seminar-in-a-can" program so members could put on programs at their local chapter since many cannot attend the annual meetings. We publish top-notch newsletters for our members as well. Not easy tasks, but seeing the final products and hearing the positive comments is very rewarding.

It has been a lot of work, but worth every bit of it. You develop special bonds with people you work with as you try to reach a common goal. Your metal is tested and it is a special feeling when you complete a seminar or symposia with your new committee friends. There is always someone there to help you with your project. I cannot recall one time I asked for help and did not cheerfully receive it.

Maybe most of all, I enjoy the friendships that have evolved. I get a genuine thrill when I sit down with the Claims Section Committee to work to be the best committee in the Society. This is not an easy task as the other section committees share the same goals.

We always have a committee dinner one evening of our annual meetings, and this is an event I wouldn't miss for anything. We share experiences, including the ups and downs of our industry. We see careers blossom, while watching others survive downsizing. We network and offer assistance and encouragement wherever we can. There are other benefits as well.

I have been able to visit places at the annual meetings I would never get to see, but for my Society service. I have been

Continued on page 24

What National Service Means to Us

Continued from page 23

able to take advantage of the educational resources the Society provides. I have attended seminars, workshops, and conferences I would not have been able to attend. As mentioned before, I have made new friends I would not have met, but for my Society service.

About six years ago I was privileged to serve as the chairman of the Claims Section and I count it as one of my many blessings. Then after my three year term expired I became involved in the Circle of Excellence program and continued on the Claims Section Committee for one year. From there I was appointed a Sections Governor and where I serve today. Tomorrow, I hope to continue volunteering in national service in another capacity.

If you are interested in joining the ranks of people you admire and respect, traveling to wonderful locations across the country, making new lifelong friends, national service might be right for you. The benefits will be far more than the price you pay. I hope you will take advantage of the opportunity. I wish you the best."



**John A. Giknis, CPCU,
AIC, RPA**
National Service:
Claims Section Committee
Local Chapter: Central
New Jersey

"ISO ClaimSearch is an industry claims database with our participants located throughout the United States. National Service in the Claims Committee is important to me as it provides access to knowledgeable claims people nationwide, whose expertise we at ISO can rely on, for national and regional issues, and who can use me as a resource as well. Not only do we appreciate interacting with representatives from the claims industry from various size companies, there exists knowledge in a range of disciplines within the claims field; from recovery to special investigations that is not available elsewhere. These folks provide an additional contact source within the companies. They are very responsive and professional, and it is rewarding for me, and beneficial to our company, to be associated with them. And they answer their e-mails!"

Apply today for national service, there are many personal and professional rewards awaiting you!

If you would like to volunteer for national service, visit www.cpcusociety.org, then click on "Membership" and "Volunteer for Society Service." ■

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Claims Quarterly Editor

Marcia A. Sweeney, CPCU, AIC, ARe, ARM, AIS
Horizon Management Group
a division of the Hartford Financial Services
e-Mail: marcia.sweeney@thehartford.com

Claims Section Chairman

Robert E. McHenry, CPCU
Westfield Group
e-Mail: RobertMcHenry@westfieldgrp.com

Sections Manager

John Kelly, CPCU
CPCU Society

Managing Editor

Michele A. Ianetti, AIT
CPCU Society

Production Editor/Design

Joan Satchell
CPCU Society

CPCU Society
720 Providence Road
Malvern, PA 19355
(800) 932-CPCU
www.cpcusociety.org

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