CPCU SOCIETY INSURING YOUR SUCCESS

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Chairman's Corner

by Robert McHenry, CPCU, AIC, AIS

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

"If nothing changes, nothing changes."

—Justin Herald

I had the pleasure of going to an Indians versus Twins spring training game in Winter Haven, Florida with our claims senior management (although the Indians lost). I parked my car behind a van with a bumper sticker reading "If nothing changes, nothing changes."

Think about the changes we develop, or are asked, required or forced to accept in our industry. How do we react to these changes? What would life in claims be like if nothing had changed? Consider how you would handle claims in 2006 with:

- Dicta-belts for recorded interviews or handwritten statements with pen and paper
- Polaroid cameras with the sticky coating bars; manual paper files
- no computers, no e-mail, no means to attach documents of photos to an e-file
- all typed or handwritten memos; no mapping web sites; no Internet research
- no telephone book.com; no handwritten estimates
- typewriters, hand-operated adding machines, U.S. mail versus fax machines, payphones, carbon paper, and paper maps, etc., etc. . . .

Thank heavens for spell check!

Technology has brought us digital cameras, recorders, computerization, the Internet and limitless information, facsimiles and scanners, cell phones, GPS and instant communication worldwide. We have become 24 x 7 x 365.

Our industry is governed by insurance departments, NAIC, legislative bodies,

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CPCU CHARACTER & CONFIDENCE

Look inside for information on the CPCU Society's 62nd Annual Meeting and Seminars, September 9–12, 2006, Nashville, TN.

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laws and regulations, court decisions, etc. What impact has and does each of these well-intended entities have on you and our industry? One decision, *Scott-Pontzer,* in Ohio cost the industry an estimated up to $3 billion without collecting premium dollar one. Think about the legal decisions in your state.

Labor rates were $6 per hour when I became an adjuster. There were no automobile airbags, no computers, no unitized bodies, no clear coats, no rack and pinion steering, no CD players, no anti-lock brakes, and no supplemental restraint systems . . . and I am really not that old!

No one ever heard about claims involving toxic mold, construction defects, lemon law, silicosis, welding rod fumes, radon, proposition 103, employer intentional torts, or the "twinkie defense." The CPCU program was in five parts.

Our companies were compartmentalized in "silos." Do you remember when there was little collaboration between the departments let alone conversation or cooperation? Now, we frequently partner to write accounts. We also cross-train and work on project teams. The CPCU program helped all of us learn about company operations, accounting, and management.

I know this article only scratches the surface of the changes claims professionals have gone through. Even positive change is stressful, and who likes to be taken out of their comfort zone? Yet, I want each of you to think about all the changes you have faced throughout your career. Wow, there really are too many to count, and guess what? More change is on the way. . . .

You have all dealt with a voluminous amount of change.

How did you do it? What training have you had? How did you deal with the stress? You are still here and reading this article so you obviously must be doing something right in managing change in this ever-changing claims business.

Here's what I have learned during the last 31 years in this business—the basics of claims handling has never changed; only the tools are different. Each claim still involves the investigation of coverage, liability, damages, subrogation, and salvage. Any form of quality assurance, file review, damage assessment, or decision-making software makes little difference if the basics aren't addressed.

There are great references to help us adjust that I would like to suggest you read: *Who Moved My Cheese?* and *The Stress of Organizational Change* for starters. You also have 1,400 fellow Claims Section members, an active *Claims Quarterly* newsletter, a great Claims Section web site, and a Society of 26,000 to back you. No one is ever alone. ■

"Keep constantly in mind in how many things you yourself have witnessed changes already. The universe is change, life is understanding."

—Marcus Aurelius

CPCU
CHARACTER & CONFIDENCE

Don't Miss these Annual Meeting Seminars from the Claims Section

Dealing with Catastrophic Verdicts: An Excess Verdict Program Can Save the Day!

Tuesday, September 12
8 – 10 a.m.

This follow-up seminar to the Mock Trial will present a system to teach claims personnel a novel, cost-effective approach to settling or overturning cases that resulted in high verdicts.

ACE Insura, Claims Detective

Tuesday, September 12
10:15 a.m. – 12:15 p.m.

This seminar focuses on actual claims or court cases that illustrate the value of being able to interpret policy coverages; and presents a structured approach to policy analysis.

Mega-Catastrophes: Industry and Government Collaboration

Tuesday, September 12
1:30 – 3:30 p.m.

Can a partnership be developed between government and industry to handle losses exceeding the industry's capacity? How can we maximize the use of the private sector strengths and expertise in claims handling under a private-public partnership? A panel of speakers will present the points of view of the regulator, legislator, primary insurer and reinsurer, and broker.

Register today for the Annual Meeting and Seminars at www.cpcusociety.org.

Yes, You Can Teach an Old Adjuster New Tricks!!

by Elise M. Farnham, CPCU, ARM, AIM, CPIW, RPA

Elise M. Farnham, CPCU, ARM, AIM, CPIW, RPA, is president of Illumine Consulting, a firm serving the risk management and insurance communities. She began her career in 1973 with Crawford & Company, and became its first female claims branch manager. She is a member of the CPCU Society, and has served on the Board of Governors and various committees and task forces. She is a member of the American Institutes' Associate in Risk Management Advisory Board. Farnham is past president of the National Association of Insurance Women, and currently serves on the Board of the Insurance Professionals of Atlanta. She has been named Insurance Woman of Atlanta, and National Claims Professional of the Year. Her articles have been published in *Business Insurance, Claims* magazine, *Claims Quarterly,* and other publications.

Why is it that the best ideas seem to hatch over a few drinks with friends? I've just had another experience with that phenomenon and it has taken my life on a new course.

As I was preparing to attend the CPCU Society's Annual Meetings and Seminars last October, I knew that my job would be ending soon. I had interviewed with several great companies, but for one reason or another we couldn't work out a job for me. You'll recall that Hurricane Wilma hit on October 24, 2006, smack dab in the middle of the Annual Meeting. As I was visiting with friends one evening and having a drink prior to the night's events, we were brainstorming ideas for my next job. Finally, I looked at them and said, "Well, if all else fails, I can just go work hurricane claims for awhile." They sat up, took notice, and pointed at me and said, "That's exactly what you should do . . . but wait, do you know anything about handling property claims?" I assured them that I did.

My experience with property losses began only two weeks after I was hired by Crawford & Company in its Dallas office in 1973. A huge hailstorm hit the Oak Cliff section of Dallas, and I was assigned to administrative duties. I will never forget working with those old-time Cat adjusters, working until 11 p.m. every night, typing and photocopying reports on an IBM Selectric typewriter, and mailing tons of reports, photos, and diagrams to carriers. It was a manual process from start to finish.

Things didn't change much during my time as an outside field adjuster. Eventually, pricing books were created and distributed, but estimates were written and computed by hand, contents inventories were depreciated by referring to pages of "life expectancy" tables, and photos were Polaroid, since one-hour processing had not arrived on the scene as yet.

In the late 1980s, I moved into management positions and no longer was required to adjust claims. I made decisions about systems, software, and work processes, but never had to actually ***do*** those processes myself. Now here I was, in 2005, contemplating becoming a field adjuster yet again.

Not being one to make decisions while under the influence, I waited a few days, called a friend of mine who is a Cat adjuster, and got advice from her about working independently. She offered insight and assistance as to how I might get hired. She sent my name to Hill Country Claims Management in Kerrville, Texas . . . and I was hired! After an orientation program, and an Xactimate training program, I was assigned 52 claims, all for ABC Insurance Company in Florida, and I went off to Miami.

I was a bit apprehensive about what I'd find once I arrived there. How was the work done, information moved, and more importantly, could I cope?

Well, I'm proud to say that I managed quite nicely. Some things changed dramatically, while other things were "déjà vu all over again" as Yogi Berra might say. What follows are the highlights and the lowlights of the experience.

The Process

What worked in the old days would not have sufficed in the aftermath of Wilma. With phone lines down, utilities disrupted, and mail service suspended, all I could think was, "thank goodness technology has moved forward!" My work was done completely electronically. I received my assignments at the ABC Insurance Company web site, used Xactimate to create the estimates and tabulate the digital photos, and converted the final report to a PDF file for transmission back to ABC Insurance. Receipts and documentation from

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Yes, You Can Teach an Old Adjuster New Tricks!!

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insureds were scanned and added to the final report. Nothing was mailed except original documentation back to the insureds. Some of the insureds were even savvy enough to e-mail photos to me that they had taken immediately following the storm. No hard copies. Overall, the lifetime of a claim was considerably shorter than before.

Communication

Thank heaven for cell phones! In my prior experience as a field adjuster, I can remember looking for pay phones in convenience stores, gas stations, and hotel lobbies. Not any more!

Upon first arriving in Miami, I went to Costco and purchased a contract on a cell phone at its discounted rate, which had a local Miami telephone number. I thought it only fair that the insureds should be able to call me on a local number, and once the storm was over, I could discontinue the number. It was particularly beneficial once I returned home and finished up some of the paperwork from Atlanta. The insureds probably assumed I was still in Miami since they were calling a Miami number and this eased any possible "separation" anxiety. ABC Insurance assigned me a number in its system as well.

I went to Efax.com and got a free fax number, which sent faxes to my e-mail. Hill Country gave me a spot on the web site where my team leader could make comments about estimates, coverage, etc. Communication was totally electronic, and I was mobile. Examiners, my team leader, and the insureds could all communicate with me at any time . . . well, except when I was climbing a roof.

Scoping the Loss

And I climbed a lot of roofs. This is one area that hasn't changed so much in the last 30 years. ABC Insurance required that I use a metal tape measure and create a complete diagram of each elevation and damaged interior room. This was the most time-consuming portion of the adjustment process. But up on the roof I knew this was the right thing for me to be doing. When I looked out over the sea of blue tarps, I knew I was making a difference in someone's life.

Preparing the Diagram

Xactimate is a great tool for diagramming interior rooms. All you have to do is enter the dimensions, and it automatically calculates the correct amount of materials you will need to effect repairs. I'm sure this works so well since most rooms are square. Unfortunately, roofs are a bit of a problem. I found it easier to resort to drawing the roof and manually calculating the roofing materials, just like in the old days, using a triple-sided ruler and graph paper. I noticed that some of the less-experienced adjusters were drawing diagrams freestyle on plain paper and not using a straight edge. They might not know about the advantages of graph paper, which is a great help in roughing out perspective and straight lines. It also lends a professional look to the diagram—making the claim and loss more easily reviewed by the examiner. When I first arrived I had a difficult time finding graph paper. After some searching I discovered a local K-Mart had a supply, and I stocked up. Now I know to bring a supply of my own when I go on the next Cat.

Locating the Insured Property

Insured residences were so much easier to find! No more pages of atlases and Mapsco's all over the car. I learned to cross-reference Mapquest with Microsoft's Streets and Trips, and always, at least one was correct. With Streets and Trips, I could run a route based on zip code numbers, and the software helped organize each location in a logical order. I could then call insureds, make appointments, and inspect each day's losses within a very small area. This saved time in planning since the computer could sort the locations, and certainly saved time when I was doing the inspections. Driving time was kept to a minimum. Next Cat, I'm trying GPS!

The Policyholders

Due to the number of hurricanes and losses in Florida over the past few years, the policyholders there are now quite knowledgeable. For the most part, they knew what I would ask, and had the documentation or response ready. However, they were no less traumatized than others after experiencing a loss, and I spent time with people who cried, who were worried and exhausted, who had seen most of what they owned destroyed, and who wondered how they would rebuild their lives. They were even

worried about the 2006 hurricane season while still in the throws of the 2005 season. But the best part is that they were so glad to see me!

I never felt threatened or concerned for my safety. There were inspections in rougher parts of town, but from past experience, I knew to inspect those locations earlier in the day when the riff-raff is usually sleeping in from a hard night of rabble rousing. I also made it very clear that I represented the insurance company—rearview mirror tag hangar, logo on my shirt, and the ever-present ladder. People were anxious to help me advance the process and have their claim concluded quickly.

Since this was Miami, there were language issues—I do not speak Spanish, but we were always able to find a trusted friend or family member who could interpret. Many times I would call the insured who would respond, "I've been waiting for the insurance man to call." It would take several minutes to explain that I was the "insurance man," and that "yes, I will climb on your roof."

Public Adjusters

Out of all the claims I was assigned, only two had public adjusters (PAs) on them. One involved an insured who had been out of the country when the hurricane hit and needed help with immediate, temporary repairs, and the second involved an insured with numerous properties who couldn't be available for all the inspections. The PAs didn't really help the process overall, but were obviously being used by policyholders who were unable to make themselves available to me during the handling of their claim.

This was a new experience for me because, in the past, I hadn't thought there were any valid reasons for hiring a PA.

Supervision

Thirty years ago, I would spend the equivalent of one day on the road and two days in the office to catch up the paperwork and inform my supervisor as to what was happening on my claims. That has changed! I didn't have an office in Miami, and neither did Hill Country Claims.

I was assigned a team leader and met him at the Xactimate training session. I never saw him again. We communicated via e-mail or cell phone. We were both domiciled in Miami, but there was simply no need for in-person visits. I would upload estimates for his review, he would make comments, and then I'd send the file on to ABC Insurance. It was very efficient, and saved a lot of time not having to drive to a meeting place or office.

The Cat Experience

The hard work and long hours were the same as 30 years ago! From 7 a.m. until 10 p.m., I worked on inspections and write-ups. I did give myself Sunday mornings off, but was back to work after lunch. After all, the weekends were a great time to catch people at home.

I occasionally felt isolated as I have spent the better part of my career working in an office environment with lots of people around. The isolation would have been worse if I had to stay in a motel or hotel. Fortunately, a great friend of mine let me stay with her, so I was better off than most Cat adjusters who spent the majority of their time either in the car or in the hotel room.

Overall, it was a great experience to get back to where the "hammer meets the nail" and deal directly with individuals who are impacted by our industry and its good and services. If you feel you've gotten in a rut and are ready for a change, this would certainly be ***it***!

Oh, and the Cat adjuster friend whose advice and counsel helped me get started? Well, she's decided to change her career, and go into teaching! ■

An Evolving Concern

by Michael Fusselbaugh, CPCU, ARM, ARe

Michael Fusselbaugh, CPCU, ARM, ARe, is a senior vice president for strategic business development at Hartford Steam Boiler. He presents an historical perspective of HSB, and illustrates how a focused mission can endure the test of time.

Life, health, property, and casualty. We at The Hartford Steam Boiler Inspection and Insurance Company (HSB) have never fit neatly into those lines of business. Not in 1866 when our founding fathers developed a solid solution to boiler explosions, nor today as we continue to offer a line of equipment breakdown and other specialty insurance products to address needs worldwide. The unique influences and values upon which our company was founded have continued to sustain us and enabled us to evolve over our 140 years.

Addressing a Timely Concern

At the time of our founding, steam power was at the heart of the industrial revolution. It was what drove industrial machinery, locomotives, and steamboats. Its potential seemed infinite. However, controlling it was crudely developed, and ignorance of its properties the cause of thousands of horrific boiler explosions.

In fact, during the 1850s, explosions were occurring at the rate of almost one every four days. Most simply wrote them off as "acts of God" with little thought to their prevention. People who ran industrial concerns assumed that sooner or later their boilers might even explode, and they would lose their boiler operator and possibly one or two other workers.

However, there was a group in Hartford—the Polytechnic Club—that dismissed the "act of God" cause and took a practical point of view. They came to the conclusion that boiler explosions occurred because the pressure inside the boiler became greater than the ability of the boiler to withstand it. They reasoned that better materials and design—with periodic in-service inspections for weaknesses—would help prevent explosions.

Under that premise, the mission of The Hartford Steam Boiler Inspection and Insurance Company was born.

The onset of the Civil War, however, curtailed the project until 1865 when a devastating event occurred. On April 27, 1865, the Mississippi River steamer Sultana, carrying home thousands of war-weary Union veterans, exploded, killing an estimated 1,200.

Loss Prevention

The Polytechnic Club quickly reconvened following the tragedy, and formed a company based on its new business concept: to inspect boilers in an effort to help prevent explosions and to sell boiler users insurance that would indemnify the policyholder for loss caused by an explosion.

This philosophy of loss prevention enabled the company to grow quickly and evolve as equipment and technology evolved. In its 140 years, the company that began offering boiler and machinery coverage first to the industrial pocket in the northeast in the mid-1800s, has expanded to offer equipment breakdown coverage (including electrical and mechanical as well as boiler and machinery) to worldwide markets.

Our focus on loss prevention is still at the forefront of all we do today. Our loss prevention people also work in close coordination with our claims and underwriting personnel, and oftentimes are the initial responders to an event. They investigate and gather information to facilitate the claims process, but they also go the extra mile to get our customers back into operation after they suffer an equipment breakdown. We recognize that to lose time getting back up and running after a disaster or breakdown can have a disastrous effect on a company's viability.

Today

Currently, HSB serves more than five million client locations worldwide, and has relationships with 260 insurers from different parts of the world. It's a leading equipment breakdown insurer in the United States and Canada, and has an international insurance operation headquartered in the United Kingdom.

Equipment risks have also changed over the years. First, risks were for:

- heating boilers
- hot water heaters
- production machinery
- pumps
- air conditioning and ventilation
- refrigeration

Add to those, other risks that led Hartford Steam Boiler to re-label its boiler and machinery coverage to equipment breakdown insurance:

- computers
- telecommunications
- electrical systems
- diagnostic equipment
- inventory control
- building automation
- security and 911 systems
- computer-controlled machines
- automated retail equipment

This broad title provides a significantly different connotation about our activities, and gives agents and insureds a better appreciation for the breadth of the coverage.

We also provide a wide range of standard and specialized risk management services to help customers modify and manage risk:

- infrared thermography
- electrical preventative maintenance
- fire protection engineering
- property and casualty surveys
- operation and maintenance training
- transformer oil gas analysis
- turbine optimization program
- steam turbine reliability assessment
- loss and exposure analysis

Clearly, as technology keeps changing, we must continue to address new exposures, coverage enhancements, and risk management and loss prevention procedures that meet the modern needs of our clients and our companies. It's an evolving concern. ■

International Adjuster Extraordinaire!

Patrick H. Jeremy, CPCU, AIC, RPA, is vice president and executive general adjuster, Hartford Steam Boiler Inspection and Insurance Company.

One of our Claims Section Committee members is a career adjuster at Hartford Steam Boiler Inspection and Insurance Company (HSB), and this is his story.

Pat Jeremy was born and raised in southern California. His teen years were spent attending Bishop Amat Memorial Catholic High School, cruising Colorado Boulevard in Pasadena, listening to the Beatles, attending bonfires on the beach, scuba diving, and working at McDonald's to put fuel in his Honda 90 motorcycle.

After graduating from high school in 1966, Pat entered college on his way to an engineering degree. But due to the then-current political condition (Vietnam War), the government had other plans and in May 1967 Pat enlisted in the U.S. Navy, this time on his way to nuclear powered submarines. After two and one-half years of schooling, he arrived in Pearl Harbor and reported aboard the USS Queenfish SSN651, a fast attack submarine, home ported in Hawaii. During the next three and one-half years he would be involved in various "training exercises." These excursions included a trip to the Artic Ice Cap (which also involved surfacing at the North Pole), port visits to Japan (where Pat was the first U.S. sailor to set foot in Japan after the end of the war in Vietnam), Hong Kong, and the Philippines. Pat spent a great deal of his time with the Navy underwater; the longest time submerged was 72 days.

Pat received an honorable discharge after serving six years in the Navy. Two months later he enlisted in the U.S. Navy Reserve, and spent the next 20 years in the nuclear submarine support community. In August 1993, he retired after 26 years in the military, as a Master Chief Machinist Mate (SS).

His civilian career started in August 1973. Hartford Steam Boiler Inspection and Insurance Company recruited a good percentage of its field engineers from the Navy; because of this Pat was an ideal candidate. He was hired as a loss prevention inspector in the Los Angeles branch. After two years in the field, he was promoted to supervising inspector and adjuster, splitting his time between claims and engineering.

As HSB expanded its coverage into all risk property, Pat broadened his knowledge by being the first employee in the company to attain the AIC designation. Also during this time he began his involvement with the PLRB Claims Conference, and by the 1988 conference, he was presenting a course on boiler and machinery insurance.

Fueled by the support of HSB, and being a proponent of continuing education, Pat went on to receive his CPCU designation in 1992. Much to the delight of his boss, Richard Evon (regional director of engineering/claims), Pat's conferment was in San Francisco requiring only a round-trip Bart ticket.

Pat became a committee member of the Claims Section in 1994. Through his participation in both organizations he was instrumental in getting the CPCU Society involved with the PLRB Claims Conference in 1999. Since then he has sat on the PLRB Claims Conference Planning Board representing the CPCU Society's Claims Section.

As HSB extended its reach into the international arena of high-end property accounts, Pat followed with claims work supporting the Hong Kong and Malaysia offices. This would take him into numerous countries over the next three

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Pat's mode of transportation to inspect a claim in the Rocky Mountains.

International Adjuster Extraordinaire!

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years and this would lead, over time, to the expansion of Pat's territory to just one area—"planet Earth."

One of the more interesting adventures for Pat was a visit to Indonesia's Rain Forest outside Pekanbaru. His journey began in San Francisco with an 18-hour flight to the Pekanbaru airport, where he met up with four other individuals. They then took a two and one-half hour Jeep ride in the middle of the night through the rain forest of Indonesia to one of the world's largest pulp mills. They arrived at the mill sometime after midnight only to find, in spite of reservations, there were no vacancies at the company hotel. The plant manager was able to relocate a few of the sleeping hotel guests to employee housing in order to free up accommodations for the group. They were able to obtain a little sleep before their meeting the next morning. Food was out of the question until breakfast the next morning.

During an investigation in Bolivia, Pat had the harrowing experience of crossing a recently constructed suspension bridge, over a 100-foot ravine, to gain access to a portion of a hydroelectric facility that was damaged by an occurrence.

Having accumulated millions of miles traveling to investigate claims, Pat has come to appreciate that some methods of travel are more unique than others. In order to investigate a claim in the Rocky Mountains of Colorado, the only means of access to the site was via a narrow gauge railroad. No, he did not take a train, but Pat and four other people did shoehorn themselves into a small work car. The 45-minute ride took them over steep terrain and wilderness area with a view only few can imagine. What an adjuster must do to gain access to a loss site.

Today, as vice president and executive general adjuster of HSB special risk claims, Pat is responsible for the management and adjustment of HSB's power generation book of business.

On the personal side, Pat has been married for 30 years to his wife, Debbie, whom he met while attending the Navy's nuclear power school in Vallejo, California. Together they have three sons and seven grandchildren. In the past six years, Pat's hobbies have changed from woodworking to playing with grandchildren.

Pat is a member of the CPCU Society's Mt. Diablo Chapter and can be reached by phone at (925) 602-4555 or by e-mail at patrick_jeremy@hsb.com. ■

Register Today!

The CPCU Society's 62nd Annual Meeting and Seminars

September 9-12, 2006 ◦ Nashville, TN

Featuring exciting celebrations, riveting Keynote Speakers, the Grand Ole Opry, and more than 35 educational seminars!

- Celebrate at Saturday's Opening Session, national Conferment Ceremony, and Congratulatory Reception.
- Hear Sunday's Keynote Speaker, Chief Richard Picciotto the highest-ranking firefighter to survive the World Trade Center collapse and author of *Last Man Down*.
- Attend two new exciting General Sessions on critical industry issues and environmental catastrophes.

Visit www.cpcusociety.org for details and to register online, or for more information, call the Member Resource Center at (800) 932-CPCU (2728), option 5.

CPCU
CHARACTER & CONFIDENCE

Maximizing Subrogation Potential While Adjusting Cargo Claims

by Randall K. Roonan, Esq.

Randall K. (Randy) Roonan, Esq., is a partner in the law firm of Graham, Miller, Neandross, Mullin & Roonan, L.L.C., and has been practicing in the state and federal courts in New York, New Jersey, and Connecticut for 25 years. He specializes in commercial insurance defense and subrogation. He has taught courses nationwide on Marine and Inland Insurance including a five-year tenure as a part-time faculty member of the United States Merchant Marine Academy at Kings Point. He has served as an officer of several organizations including director, corporate secretary, and general counsel for The National Cargo Security Council. Roonan can be reached at (203) 520-6312 or rkr@grahammiller.com.

Cargo claims are similar to other insurance claims in many respects, but they do have some unique features. They are easy to adjust because there is usually a sale of the insured property pending. Most cargo is shipped to consummate a sale, and is covered by an invoice. One key distinction between cargo claims and other insurance claims that is commonly overlooked by novice adjusters is the subrogation opportunity.

A common carrier is a "virtual insurer" of goods in its possession. It is responsible for the safe carriage of goods, and liable for loss or damage regardless of cause. There are a few exceptions to this rule, but they are so rare that they are not worth mentioning at this time.

A carrier can modify its liability by written contract with the shipper but it cannot totally exonerate itself from liability. It can, however, limit its liability to an amount less than full value provided that it affords the shipper a reasonable opportunity to declare full value and pay a higher freight. The bottom line is that virtually all cargo claims have subrogation potential. This potential is easily lost if careful attention is not paid to protecting subrogation when the claim is adjusted by the cargo's underwriter.

Identify the Responsible Parties

The operative word here is "parties"—plural. Keep in mind that this is not a criminal investigation. Your concern here is not necessarily who did the dirty deed, but more on who's watch the dirty deed was committed. As mentioned above, carriers are virtual insurers. That means that if the goods were in their constructive custody when the loss or damage occurred, they are financially responsible. You might also have a cause of action against other parties. For example, if goods are dropped by a stevedore while they are covered by an ocean bill of lading, you would have the right to maintain an action against both the ocean carrier and the stevedore.

The easiest way to determine which party will ultimately be responsible to pay a claim is by referring to the bills of lading and waybills. These documents serve a number of functions, the most important of which is that they represent the contract of carriage, and constitute a receipt for goods. The party that issues the bill is generally the party primarily responsible from the place designated as the point of origin to the ultimate destination.

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Maximizing Subrogation Potential While Adjusting Cargo Claims

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Put the Responsible Party on Notice

Subrogation is an afterthought with most forms of insurance. Adjusters might investigate subrogation potential, but it is rare that the person who adjusts the first-party claim is the person who pursues the claim against a third party. The claim is generally adjusted and then passed along to the subrogation department. A cargo claims adjuster does not have this luxury. He or she has to, at a minimum, make sure that the carrier is given timely notice of the claim. The timely filing of a claim is critical regardless of the mode of transportation. Notice of claim provisions are controlled by statute or international convention in some instances and by the contract of carriage. The time within which claims must be filed can be extremely short. Some domestic air carriers' waybills contain notice provisions as short as four days. Time should not be wasted trying to find out what the time limits are. A claim should be filed immediately with anyone who might be ultimately responsible for a loss.

The law also varies with respect to what constitutes sufficient notice of claim. The Warsaw Convention, for example, is less strict than the Interstate Commerce Code (ICC). According to the ICC, a notice of claim:

- must be in writing
- must contain sufficient information to identify the shipment
- must assert liability against the carrier
- must make claim for a specific or determinable amount

Collect the Evidence

Regardless of its merits, a cargo subrogation claim is not going to be paid if it isn't properly documented. Once a claim is filed, you should collect as many documents as you can. Do not assume any document is irrelevant. Through documentary evidence you should be able to trace the shipment from point of origin to the final destination. Certain documents are critical such as:

- loading or vanning tallies and loading certificates
- packing lists
- bills of lading and air waybills
- freight bills
- dock receipts
- trailer interchange reports (TIRs)
- delivery receipts
- survey reports

It is imperative that these documents are collected before the claim is paid. Insureds are more cooperative if they are looking for money. Make sure that the copies you have are legible. Oftentimes documents have been faxed so many times that they become illegible.

Make a Reasonable Attempt to Salvage Damaged Goods

Mitigation of damages is not unique to cargo claims. Damaged cargo usually has some value. The owner of damaged cargo has an obligation to dispose of it on the best financial terms possible. Oftentimes damaged goods cannot be salvaged for health reasons. If that is the case, the reason should be documented. Some policies contain names and labels clauses that preclude salvage. In those instances, salvage bids should be pursued to document what the salvage value would have been. Some insureds agree to accept the goods at a depreciated price. Again, salvage bids should be obtained to justify the depreciated value. It is a good idea to get at least three salvage bids. Finally, if the goods cannot be salvaged, a destruction certificated should be obtained. This could be as simple as a signed statement from someone at the refuse transfer station where the goods were destroyed.

The laws governing cargo claims are complicated and vary by jurisdiction and mode of transportation. Regardless of what laws apply, if you follow the simple steps outlined above, you will enhance your company's recoveries. ■

Construction Defect Coverage Analysis—Easy as 1, 2, 3?

by Ginny L. Peterson, J.D., CPCU, and Marie L. VanDam, J.D.

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It is Monday morning. Bleary-eyed from watching the late-night basketball game (why are there so many NBA games anyway?) and from the late-night request of his daughter for one last drink of water, the busy claims professional staggers to his desk to begin his day. Upon opening his e-mail, he sees an urgent message: "Call me immediately about the latest construction defect claim. I am not sure where to begin; it is different than all of the other ones. Please read the 20-page complaint and call me."

How often has this scenario happened to you? How many different types of construction defect claims can there be . . . and how does one begin to determine whether an insurance company has the duty to defend or indemnify for such a claim?

The coverage analysis for construction defect claims, while perhaps not easy, should be completed sequentially. The facts of a given case, tied with the policy language and a court's past interpretation, are critical for any coverage analysis. Forgetting an important step can lead to unexpected and unfortunate results. If any of the potential determinations are overlooked, an incorrect acceptance or denial of coverage can result.

Step One: Determine if the Individual or Entity Is an Insured Under the Policy

If the insurer is notified of a construction claim, it should first determine if the individual or entity requesting coverage is an insured under the policy. While in most cases the individual or entity requesting coverage is listed in the declarations, sometimes it is not. The insurer then must check the section entitled "Who is an insured?" The policy explains who an insured is, depending on the type of business entity, individual partnership, limited liability company, or

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Construction Defect Coverage Analysis—Easy as 1, 2, 3?

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other. Be sure to consult the Definitions section carefully—if the entity is not named, there may be no coverage.

Conversely, even if the entity is not named, coverage may exist for newly acquired or formed entities (usually for a period of time). There may be coverage for predecessor or successor liability, a topic hotly debated in courts. *Henkel Corp. v Hartford Accident & Indemnity*, 62 P.3d 69 (Ca. 2003); *P.R. Mallory, Inc. v American States Ins. Co.*, 2004 WL 1737489 (Ind.Cir. 2004); *Northern Ins. Co. of New York v Allied Mut.*, 955 F.2d 1353 (9th Cir. 1992).

Lastly, check the endorsements for additional insureds, which are common in construction insurance. Often, the general contractor will be listed on a subcontractor's policy or the project owner or developer will be listed on the general contractor's policy. The scope of the insurance coverage is usually limited to the liability of the additional insured arising out of the operations of the named insured.

Step Two: Analyze the Insuring Agreement

The next step is to analyze the insuring agreement. The insuring agreement of a commercial general liability (CGL) policy, the most common policy under which a construction professional's liability will be insured, states what insurance is actually being purchased and the details of the applicable coverage. While many insurance companies adopt the specific language contained in standardized Insurance Services Office (ISO) policies, some insurance companies may modify the standardized language or provide additional endorsements to the insured, thereby potentially broadening or limiting the coverage available under the policy. It is also necessary to consult the Definitions section of the policy for further clarification of certain terms used in defining the coverage.

For construction defect claims, the applicable coverage will generally be outlined in the "Bodily Injury and Property Damage Coverage" section of the CGL, the first section of the policy to be examined when determining coverage. The standard coverage language typically found in most policies states:

> **SECTION I—COVERAGES**
>
> COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY
>
> Insuring Agreement
> We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result.
>
> This insurance applies to "bodily injury" and "property damage" only if:
>
> The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory;" and
>
> The "bodily injury" or "property damage" occurs during the policy period. [1]

Under this standard insuring agreement language, three key terms may be in dispute for coverage for construction defects: "occurrence," "property damage," and "during the policy period."

What Is an Occurrence?

According to the standard Definitions section of a typical CGL policy, an "occurrence" is defined:

> **SECTION V—DEFINITIONS**
>
> 12. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Most CGL policies do not go the one step further to define "accident," therefore, whether an act constitutes an "occurrence" is often determined by the courts. The majority of courts have determined that an "accident" consists of an unexpected happening without intention or design; however, the natural and ordinary consequences of an act are ***not*** an "accident." *See R.N. Thompson & Assoc. v Monroe Guaranty Ins. Co.*, 686 N.E.2d 160 (Ind.Ct.App. 1997); *Hawkeye-Security Ins. Co. v Vector Const. Co.*, 460 N.W.2d 329 (Mich.Ct.App. 1990); *Indiana Ins. Co. v Hydra Corp.*, 615 N.E.2d 70 (Ill.App. 1993); *Mid-Century Ins. Co. v Lindsey*, 997 S.W.2d 153 (Tex. 1999).

When a claim involves faulty workmanship, several courts have determined that poor workmanship alone does not constitute an "occurrence" under standard CGL policies. *See Corder v Smith Excavating Co.*, 556 S.E.2d 77 (W.Va. 2001); *USF&G Co. v Advance Roofing and Supply Co.*, 788 P.2d 1227 (Ariz.Ct.App. 1989); *Reliance Ins. Co. v Mogavero*, 640 F.Supp 84 (D. Md. 1986). Damages resulting from the normal, expected consequences of faulty workmanship are not considered "occurrences" under the standard policy language because CGL policies were not designed to act as a performance bond. Likewise, poor business decisions are not considered "occurrences" under standard policy terms since they are intentional

acts, even if the results of those acts are unexpected or unintended. CGL policies were not designed to provide insurance coverage for an intentional, albeit poor choice in the management or operations of a business.

On the other hand, some courts have held that defective workmanship does constitute an "occurrence" as long as the resulting damage was not intended or expected by the insured. *See Fidelity & Deposit Co. v Hartford Casualty Ins. Co.*, 189 F.Supp 1212 (D. Kan. 2002); *Federated Mutual Ins.Co. v Grapevine Excavation, Inc.*, 197 F.3d 720 (5th Cir. 1999) (applying Texas law); *High Country v New Hampshire Ins. Co.*, 648 A.2d 474 (N.H. 1994). In other words, faulty workmanship is not an accident but faulty workmanship that causes an accident is covered under a CGL policy. *R.N. Thompson v Monroe Guaranty*, 686 N.E.2d 160 (Ind.Ct.App. 1997).

The following are examples of "occurrences" as determined by the courts:

- Property damage due to moisture seeping into the walls as a result of negligent construction methods constituted an "occurrence" under the applicable policy language, *High Country v New Hampshire Ins. Co.*, 648 A.2d 474 (N.H. 1994).
- Possibility that collapse of building during construction was caused by an Act of God, for example high winds, could be an "occurrence" such that coverage may exist under the CGL policy. *Shelby Ins. Co. v Northeast Structures, Inc.* 767 A.2d 75 (R.I. 2001).
- Cracked walls and structural damage to building project was an "occurrence" because the defects were not intended by the insured, *Fidelity & Deposit Co. v Hartford Casualty Ins. Co.*, 189 F.Supp 1212 (D. Kan. 2002).

Conversely, the following are examples of what are not "occurrences" according to the courts:

- The uneven settling of a new home addition is the natural and ordinary consequence of contractor's faulty workmanship in failing to properly compact the soil prior to building the addition and is not an "occurrence." *State Farm v Tillerson*, 777 N.E.2d 986 (Ill.App. 2002).
- Cracks in concrete floor and loose paint were natural and ordinary consequences of installing defective concrete flooring and applying incorrect type of paint and therefore did not constitute an "occurrence" under the CGL policy. *R.N. Thompson v Monroe Guaranty*, 686 N.E.2d 160 (Ind.Ct.App. 1997).
- Faulty repair work on roofs did not constitute an "occurrence" because defective work, standing alone, is not an occurrence as provided in standard CGL policy language. *USF&G Co. v Advance Roofing and Supply Co.*, 788 P.2d 1227 (Ariz.Ct.App. 1989).
- Premature deterioration of roads resulting from contractor's faulty workmanship was not caused by an "occurrence" within the meaning of the contractor's CGL policy. *L-J, Inc. v Bituminous Fire and Marine Ins. Co.*, 621 S.E.2d 33 (S.C. 2005).
- Failure of insulation systems on construction project did not constitute an "occurrence" under CGL policy since systems failed due to defective workmanship. *Amerisure, Inc. v Wurster Const. Co.*, 818 N.E.2d 998 (Ind.Ct.App. 2004).

As you can see, the threshold issue of whether an occurrence exists is not always clear-cut. While it appears that most courts rely on the general definition of "accident"—an unexpected happening without intention or design—they differ when it comes to whether faulty workmanship alone constitutes an "occurrence." Some courts rely on the "natural and ordinary consequence" rationale to exclude coverage under a standard CGL policy, while other courts examine whether the insured intended to cause the damage resulting from the defective workmanship.

What Is Considered "Property Damage"?

The next issue to determine when analyzing a claim for construction defects is whether the occurrence caused "property damage" as defined in the insuring agreement. It is important to keep in mind that commercial liability insurance coverage applies to the insured's tort-based obligations. These policies are generally not intended to pay costs associated with repairing or replacing the insured's defective work and products. *See Ohio Casualty Ins. Co. v Bazzi Const. Co.*, 815 F.2d 1146 (7th Cir. 1987). A claim of breach of contract, for instance, is not a tort-based obligation of the insured.

A CGL policy may define property damage as follows:

SECTION V—DEFINITIONS

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at a time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

Another definition found in many CGL policies reads:

SECTION V—DEFINITIONS

17. "Property damage" means physical damage to or destruction of tangible property, including loss of use of this property.

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In general, CGL policies cover property damage to property ***other than*** the product or the completed work itself. In other words, the coverage is not for contractual liability of the insured for economic loss suffered because the completed work is not what the damaged person bargained for. *See R.N. Thompson v Monroe Guaranty Ins. Co.*, 686 N.E.2d 160 (Ind.Ct.App. 1997); *St. Paul Surplus Lines Ins. Co. v Diversified Athletic Services*, 707 F.Supp. 1506 (N.D. Ill. 1989); *Lamar Homes, Inc. v Mid-Continent Gas Co.*, 335 F.Supp.2d 754 (W.D. Tex. 2004). However, at least one court has allowed coverage for claims partially based on a breach of contract/breach of warranty theory on the grounds that physical damage actually occurred to the work performed by the insured. *See American Family Mut. Ins. Co. v American Girl, Inc.*, 673 N.W.2d 65 (Wis. 2004).

When a diminution in value of property is claimed as damages, some courts have held that coverage does not exist for diminution in value when no physical property damage actually occurs. *See Hartford Acc. & Indemnity Co. v Pacific Mut. Life*, 861 F.2d 250 (Okl. 1988). Along the same lines, diminution in value does constitute "property damage" when the property itself sustained physical damage. See *Missouri Terrazzo Co. v Iowa Nat. Mut. Co.*, 740 F.2d 647 (8th Cir. 1984).

While most courts appear to adhere to the rationale that "property damage" under a CGL policy must result in physical damage to property other than the product or work itself, this issue is not clearly defined across the nation. For this reason, it is important to consult the language of the insuring agreement and case law applicable in each state.

What Is Considered "During the Policy Period"?

The next issue to consider when analyzing a construction defect claim is whether the property damage occurred during the policy period. This is an important consideration because if the property damage did not occur within the applicable policy period, there may not be coverage available depending on the jurisdiction.

The test for determining when an occurrence happens for purposes of coverage varies by jurisdiction. The following "triggers" are used:

1. Exposure (first exposure of injury to the claimant).
2. Manifestation (injury manifests itself during the policy period).
3. Continuous exposure or multiple triggers (either by exposure or when injury is manifested).
4. Injury in fact (the cause of the occurrence and the resulting damage happened during the policy period).

Most jurisdictions conclude that property damage occurs when the damage occurs or manifests itself. *See Wrecking Corp. of America v Ins. Co. of North America*, 574 A.2d 1348 (D.C. 1990); *Aetna Casualty & Surety Co. v PPG Industries, Inc.*, 554 F.Supp. 290 (D.Ariz. 1983). Consequently, the policy in effect at the time the damage occurred or manifests itself is applicable, not the policy in effect when the work was performed. *See U.S. Fidelity & Guar. Co. v Warwick Development*, 446 So.2d 1021 (Ala. 1984).

The following cases illustrate how the timing of the property damage is significant for coverage purposes:

- No coverage under policy for fire occurring after the policy period expired even though contractor installed insulation during policy period that caused the fire. *Millers Mut. Fire Ins. Co. of Texas v Ed Bailey, Inc.*, 647 P.2d 1249 (Id. 1982).
- Damage must occur during the policy for coverage to be effective but in the case of continuous damage, the damage must manifest itself during the

policy period. *Auto Owners Ins. Co. v Travelers Cas. & Surety Co.*, 227 F.Supp.2d 1248 (M.D. Fla. 2002).

- Fire that occurred after the policy period ended was not covered under the policy even though the faulty wiring of the building that caused the fire occurred during the policy period. *St. Paul Fire & Marine Ins. Co. v Valentine*, 665 So.2d 43 (La. 1995).

Clearly, when analyzing a construction defect claim, the timing of the resulting property damage can affect whether the CGL policy provides coverage. Examining the specific language in the applicable policy as well as the law in the applicable jurisdiction is of the utmost importance.

Step Three: Analyze the Exclusions

Once the insuring agreement has been reviewed, the next step is to examine the exclusions or limitations section of the policy. This section generally limits coverage previously given in the insuring agreement and, therefore, it must be consulted after reviewing the insuring agreement itself.

While many exclusions may apply to a construction defects claim, the following are the most prevalent:

- "Your Work" exclusion: A contractor is not covered for the repair or replacement of defective workmanship on its own work; it is only covered for damage that its work causes to other property or persons. Often this exclusion states that work completed by the subcontractor on the insured's behalf is covered. The trick is that the insuring agreement requirement of "property damage" caused by an "occurrence" must still be met. If the general contractor is sued for the subcontractor's work that does not damage other property, there is still generally no coverage for the general contractor.
- "Your Product" exclusion: Any damage to the named insured's product is likewise not covered, but if the product defect leads to damage to other property, coverage may exist.
- "Expected or Intended" damage: Most jurisdictions define "expected" and "intended" but vary on whether the standard is objective or subjective.

The list of exclusions should serve as a checklist to verify coverage. Each one should be thoroughly analyzed and compared to the facts of the case at hand.

Step Four: Analyze the Conditions

The conditions section of the insurance policy is often overlooked in construction defects coverage analysis. It contains numerous areas for exploration including the following:

- Promptness of notice of a claim: Late notice may bar coverage in some jurisdictions while others require late notice and prejudice to the insurance carrier.
- Known loss: If the insured knew of the property damage before the effective date of the policy and the insurer did not, coverage for the property damage in that policy period may be barred. Sometimes this language is express in the insuring agreement while in other cases it is implied.
- Other insurance: Under certain situations, the CGL coverage may be primary while in others it is excess.
- Pollution exclusion: Some jurisdictions recognize that construction defects that arise from dispersal of pollutants are barred from coverage.

Conclusion

The analysis of insurance coverage for construction defect claims is like walking—you must take one step at a time in order to reach your destination. While the answers that each jurisdiction gives can certainly be different and the policy language varied, the essential steps of analysis remain the same. ■

Endnote

1. All references to policy language are taken from court pleadings and do not pertain to any one particular standardized form or any particular insurance carrier's independently developed policy language.

Recovery in Employee Dishonesty Claims

by Mark S. Anderson, Esq., James I. Tarman Jr., Esq., and Bryan R. Campbell, Esq.

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  Anderson has tried several cases to verdict in Washington, Oregon, and Montana. He has represented the insurance industry and vessel owners in five major marina fires in the northwest, and was recently involved in revising the city of Seattle fire code as it relates to covered moorage facilities. Anderson has also handled a variety of construction defect and product liability cases, including several involving power generation facilities. Along with the firm's Seattle office, Anderson received the 2005 Amicus Award from the Northwest Immigrant Rights Project, due to the office's ongoing pro bono efforts on behalf of immigration and asylum clients seeking assistance while in proceedings. Anderson is a frequent lecturer for the insurance industry and maritime groups. He is admitted to practice in Washington, Oregon, and Hawaii. He also handles cases in Alaska, Idaho, and Montana.

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  Tarman handles large loss subrogation claims, including both property damage and workers compensation. While working out of the Chicago, Dallas, and Philadelphia offices, he has litigated matters in northeastern, mid-atlantic, southern, southwestern, and midwestern jurisdictions, trying cases in states ranging from New Mexico to Maine. In addition to his specialty in the subrogation area, Tarman was a general practitioner for five years. Tarman is a frequent lecturer on subrogation issues, making presentations on a number of topics to various companies and groups. He was voted an Illinois "Super Lawyer" in 2005 and 2006 by bar association peers, as reported by *Chicago Magazine*. A native of central Pennsylvania, Tarman received his bachelor of science degree from Penn State University in 1982 and his law degree from the Dickinson School of Law of the Pennsylvania State University in 1987. He is admitted to practice in Illinois, Texas, Pennsylvania, and New Jersey, and is a member of the American, Chicago, and Texas bar associations.

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Introduction

Your insured discovers that its longstanding bookkeeper of 15 years, who bakes cookies every Friday and goes to church every Sunday, has an incurable addiction to Bingo, and has stolen $250,000 over the past five years. The insured is able to document the loss, and its claim is covered in full. Is there anything the insurer can do to get its money back?

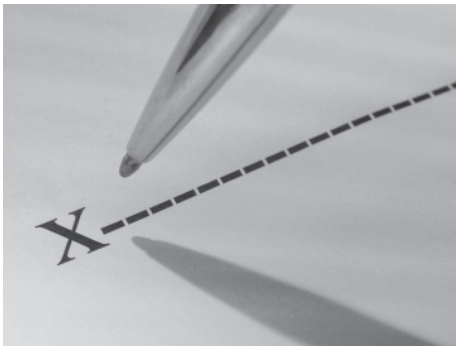
These materials examine the issues surrounding just such an employee dishonesty claim. As discussed below there are a number of legal theories from which to pursue recovery, and a number of targets that may be responsible to bear some of the loss. The following is a five-step process designed as a guide to assist you in realizing recovery in such cases.

Interview the Employee

It is imperative that the employee should be interviewed as soon as possible after the theft is reported, preferably by counsel. Time is of the essence. Once the employee obtains counsel, your access to information will be cut off for a substantial length of time. This will hinder your ability to act, and can significantly impact your priority status for purposes of recovery.

The primary purpose of the interview is to gain as much knowledge as possible on the following topics: (a) the amount of the theft and information regarding the employee's use of the funds; (b) the process in which the theft was accomplished; and (c) the location and identity of any funds or property purchased with the funds. You should have at least two employees of the insured present, preferably management-level employees, to reduce the nervousness of the employee and promote full and candid disclosure. Additionally, these witnesses can testify at trial to what the employee said.

In preparing for the interview, remember that you and the insured have leverage, power, and influence over the employee. You determine whether criminal charges are brought, and can influence whether the sentence is reduced. Do not be afraid to let the interviewee know this and use these facts to gain cooperation. While most of the interview topics relate to the marshalling of the employee's assets, you should also be concerned with the details of how the fraud was accomplished to help build a case against other potential targets for your recovery effort. As is discussed below, third parties often provide the most feasible targets for pursuing and realizing recovery. These include the bank where the checks were cashed, the accounting firm that performed audits of the organization's financial records, and friends or relatives who received the benefits of the employee's theft, particularly if they knew about the theft. Your interview should be focused on obtaining as much information as possible while keeping the following goals in mind:



Signed Confession

Obtain a signed confession specifying the amount embezzled and an admission that the employee "converted" or "stole" the funds. This will help if you sue the employee or if the employee attempts to escape the debt through bankruptcy. It is best to have the employee handwrite the confession in addition to signing it.

Inventory of all Real Property and Personal Property

Obtain a complete list of the employee's asset portfolio. The list should include all real property, personal property (vehicles, jewelry, electronics, etc.), cash, and securities. You will also need to find out what liens, mortgages, and encumbrances exist against the property, if any.

Inventory of all Bank Accounts and Brokerage Accounts

Obtain an exhaustive list of the employee's bank accounts and, if possible, bank account numbers held by the employee and his or her spouse. If the employee is paid via direct deposit, you may be able to place a freeze on the account until the civil and criminal proceedings conclude.

Who Else Knew About It?

Find out if the employee let anybody else know about the theft, specifically, his or her spouse or other employees in the organization whom you may be able to pursue. If you determine that someone else knew about it, find out the extent of that person's knowledge and whether he or she helped or provided any assistance in accomplishing the theft.

How Was It Done?

Find out exactly how the funds were taken. Did the employee open an unauthorized bank account? In whose name was the account opened? Did the employee use fake identification? Did the employee forge an authorized signature or an endorsement? It is critical to know the step-by-step process by which the embezzlement was accomplished for purposes of pursuing third parties, and/or the dishonest employee, and to ensure that this does not happen again.

Where Is the Money?

Find out what was done with the funds. This will usually be difficult for the employee to answer. He or she truly may not remember what happened with the bulk of the funds. It may be important to establish that funds were used to benefit the community in the case of a married employee, or whether the employee gifted the money to others without the spouse's consent. It is also important to identify any property that was purchased with the stolen money as it may be possible to obtain possession of that property through various legal and equitable remedies.

Property Transfers

Finally, and most importantly, attempt to convince the employee to sign over his or her other property to the insurer or, if payment has been made, to your company. As is discussed in-depth below, you may be able to substantially improve your position if you avoid pursuing the employee's property through legal attachment proceedings. Don't forget to include the employee's final paycheck.

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Recovery in Employee Dishonesty Claims

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Pursuit of Claims Against Third Parties

Your best and most likely avenue of recovery is against third-party professionals charged with the obligation to detect and/or prevent employee theft from occurring. Based on the typical profile of employees who commit fraud, recovery against the employee is unlikely, tedious, and often is not cost-effective. Many times the employee was successful in stealing the money because a third party did not fulfill its professional obligations. Depending on the circumstances, a cause of action may be feasible against the bank that cashed the checks, the accountants who performed audits on the books, and in a limited number of situations, against friends or relatives who received the benefits of the employee's theft.

Banks

Some of our best recoveries from responsible third parties have been against banks. In one case, a local bank allowed an employee of a large university to open an account in the name of the institution without corporate authorization. He took checks made payable to the institution and deposited them into this account and also received cash back from several of the deposits. The total theft amounted to well over $300,000. We were able to recover approximately $225,000 from the bank for its failure to require a corporate authorization when the account was initially opened.

The law concerning unauthorized signatures on negotiable instruments may be found in the Uniform Commercial Code (UCC). Every state has adopted this code and codified it in by statute. The pertinent sections of the UCC are highly technical. Each case needs to be examined individually to see whether sufficient grounds exist to pursue recovery against a banking institution.

1. **General Standards**
   A guideline the courts look to is whether the bank acted in a "commercially reasonable" manner and in "good faith" when accepting the fraudulent check. Generally, the entity that is in the best position to have prevented the criminal act through the use of reasonable care will be responsible for the loss.[1] For example, a bank that cashes a forged check without requiring proper identification will be required to bear the loss.

2. **Insured's Negligence**
   Keep in mind that if the insured substantially contributes to the loss through its own negligence, you may be precluded from asserting a claim against the bank. For example, if the insured writes a check to a vendor for $5, and leaves room for the vendor to add a few zeros behind the number five, then your only remedy will lie against the vendor and not against the bank. The bank's standard of care is that it must act in accordance with commercially reasonable standards and in good faith.

   A recent case in Arizona involved a company that sued a bank for conversion after it honored an instrument that was forged by one of the company's employees.[2] The court ruled that the bank can assert a successful affirmative defense if it can prove that the forgery was accomplished by an employee entrusted by the company with responsibility for the instrument and that the bank acted in good faith in the transaction. If the bank meets its burden, the company must prove that the bank acted negligently with respect to the transaction, in which event the bank then will be responsible to share the loss to the extent that its negligence substantially contributed to the loss.

   This was an issue in our university employee case referenced above. The bank claimed that the insured was comparatively at fault because it failed to detect the embezzlement, which took place over several years. In our case, the bank was prevented from arguing contributory negligence as a matter of law because it did not act in a commercially reasonable manner when it opened the account without corporate authorization.[3]

3. What is "commercially reasonable"?

The professional negligence standard that applies to banks varies from traditional negligence in that it determines what is "commercially reasonable" by looking to standards used throughout the industry, as opposed to the "ordinary person" standard. Whether a bank's actions are deemed commercially reasonable is distinct to each case and will depend on the particular circumstances. Reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage.[4]

Many times, you can use your common sense to determine what is commercially reasonable. For example, the bank acted in a commercially unreasonable manner and bears responsibility for the loss when it failed to question an individual who cashed a check made payable to the company and put the money in his personal account.[5] A bank acted in a commercially reasonable manner when it allowed an office manager and assistant office manager of a sole proprietorship to open a checking account in the company's name, although the account was subsequently used to embezzle funds.[6] To highlight how extraordinary different circumstances can be, in a recent Washington case a bank was presented with a check made payable to two people, their names separated by a hyphen. The check was endorsed by one of the named payees and presented to the bank. The bank paid the check and was determined to have acted in a commercially reasonable manner because the use of a hyphen made the instrument ambiguous as to whether the names were intended to be joint or alternate payees.[7]

4. Limitations on Actions

Be aware that there are significant time limitations that may arise when suing a financial institution. Both the bank and the insured have obligations involving "diligence" in fraud and forgery situations. The UCC requires the bank to provide written statements to its customers and requires that the customers use diligence in reviewing these statements. A customer has one year to report the unauthorized signature to the bank or the claim is barred under a laches defense, even if the customer can prove the bank ***knowingly*** misappropriated the funds.[8] However, if the bank does not make statements available to its customers, the customer cannot discover the misapplied funds, and the laches defense will not apply.[9] Some jurisdictions have different statutes of limitations depending on whether the claim arises from forged signatures on the front of the check or forged endorsements on the back of the check, respectively. The bottom line is that the time limitations place a duty upon all parties involved to scrutinize their own financial records and detect questionable transactions.

Accountants

Many of our cases involve the theft of funds from large companies that, whether they are public or private companies, have outside auditors charged with monitoring cash flow and identifying irregularities. To pursue a cause of action for accounting malpractice, the plaintiff typically needs an expert accountant to proffer testimony that the auditor's actions fell below the standard of care promulgated by the American Institute of Certified Public Accountants (AICPA) known as Generally Accepted Auditing Standards (GAAS) and Generally Accepted Accounting Principles (GAAP). As with banks, the standard is based on whether the accountant acted in a "reasonable" manner in accordance with generally accepted industry standards.[10]

The major case in Washington addressing the issue of an auditor's liability is a federal court decision entitled *Seafirst Corp. v Jenkins*.[11] In *Seafirst*, the accountants were successfully sued for failing to bring internal control problems to the attention of the board of directors and for failing to issue a qualified opinion that insufficient data existed to evaluate the collectibility of several hundred million dollars in energy loans. In *Seafirst*, the plaintiffs prevailed, relying solely on an accounting expert's testimony that the auditor's actions fell below the GAAS standards.

When faced with a potential claim against an auditor, it is necessary to retain an accounting expert who can examine the records, analyze the method of theft, and offer an opinion as to whether the auditor breached the professional standard of care as outlined by the GAAS or GAAP. Traditionally, these are very difficult cases to pursue, and, as with medical malpractice cases, it is sometimes difficult to find a qualified expert willing to examine the issue.

Friends and Relatives

In a number of circumstances, there may be potential for recovery against the employee's friends or relatives. Gifts of marital property require the agreement of both spouses. If the employee made a gift to a friend without the spouse's permission, you may be able to compel that spouse to seek replevin to retrieve the property, allowing you to execute on your judgment by seizing that property.[12]

It also may be possible to recover from friends and relatives if the gift is deemed a fraudulent conveyance. Essentially, if the employee-donor was insolvent due to the debt it owed to the employer at the time the gift was made, the conveyance may be deemed fraudulent and voidable.[13]

The tort of conversion also may be a viable remedy against friends or relatives who accept the fraudulently obtained money. Virtually every state recognizes the tort of conversion and typically an

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Recovery in Employee Dishonesty Claims

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employer need only prove that: (1) it had legal title to the property; (2) it had possession or the legal right to possess the property at the time of the conversion; (3) defendant's "domain and control" over the property denied the employer "use and enjoyment" of the property; and (4) the employer suffered damage.[14] It should be noted that a successful claim for conversion does not require the employer to prove that the defendant had a conscious intent to do wrong. Rather, the plaintiff needs to prove an intent to exercise dominion and control over the property.[15] In fact, a good-faith purchaser who buys property without the knowledge that it is stolen may be liable for conversion.[16] Please note that this remedy may not always be applicable as it traditionally applies to tangible personal property, goods, and chattels. However, depending on the jurisdiction, cash or checks can be the subject of conversion in cases where the third party received them wrongfully.[17]

Another potential remedy against third parties is the equitable doctrine of constructive trust. The remedy is "equitable" in that it is imposed against a party who, in fairness, ought not to have the property.[18] The remedy is one of the most powerful fraud-rectifying devices and is primarily imposed to prevent "unjust enrichment" to one party at the expense of another.[19] Often, constructive trusts will be imposed against parties that have abused a relationship of confidence and have wrongfully obtained property through fraudulent means.[20]

An accomplice to the fraudulent activity can be civilly liable under the torts of conspiracy and/or aiding and abetting. If third parties knew about or benefited from the employee's fraudulent activity, civil liability may attach. A significant degree of involvement is not necessary in all circumstances, and it is not necessary that the co-conspirator take affirmative steps to carry out the fraudulent activity. Knowingly accepting a benefit from the activity can be enough to trigger liability under accomplice theories.

Seize All of the Employee's Available Assets

Of course, pursuing the employee may also be feasible in some situations. Once you obtain all possible information through the interview process, you need to compare the information gathered with an asset report. Due to privacy concerns, obtaining an asset check can be difficult and even illegal, so make sure you use the proper channels and a reputable company. If it is possible, obtain the asset report prior to the interview. It will give you a reference if the employee forgets about assets, and leverage if he or she attempts to lie. The asset report will help you identify property that may exist to satisfy your claim.

Real Property

Real property may be voluntarily transferred by deed. The strongest method is by statutory warranty deed. However, a quit-claim deed may also be advisable in this situation because you are not seeking a ***guarantee*** of the debtor's rights in the property but are interested in ***obtaining*** the debtor's rights, whatever they may be. Bear in mind that you will take this property subject to all liens and encumbrances. We strongly recommend obtaining a title search of the property and involving counsel in any transfer of real property.

If the property appears to have value over and above the liens and encumbrances and the employee will not voluntarily agree to sign it over, there may be a legal remedy known as prejudgment attachment, typically governed by state statute. A lien of attachment has a similar effect as a mortgage or deed of trust. This tool provides the added benefit of locking in your priority over later liens or judgments, including liens by the Internal Revenue Service. This is extremely important because in virtually every employee theft claim, the employee will be charged with tax evasion. Unfortunately, encumbrances such as mortgages, deeds, and liens filed prior to a prejudgment lien will take priority. In addition, some of the equity in the property may be protected

pursuant to statute, such as "homestead exemptions." Typically, in those situations the excess value of the property may still be executed upon recovery purposes.

Personal Property

Personal property may also be transferred voluntarily. For most property, the only legal requirements are delivery and an objective manifestation of an intention on the part of the employee to relinquish ownership, which only requires a verbal statement. However, we recommend that you have the employee sign an agreement listing the property to be transferred along with the agreed values to apply against the overall debt.

Personal property may also be subject to a prejudgment writ of attachment. Again, state statutes set forth the details necessary to having the writ of attachment properly filed and executed. You should be aware that this method requires that arrangements be made for transfer and storage of the property. In other words, the sheriff's department will not act as the moving company during this process. Some personal property, such as vehicles, must be transferred by a change of title. These items will often be subject to liens by a bank or other credit agencies, which will take priority over your interest.

There is typically a statutory homestead exemption relating to personal property. Please note that these exemptions vary widely depending on the specific jurisdiction's statute. A typical statutory framework exempts the following: (1) clothes, furs, and jewelry—$1,000; (2) private libraries—$1,500; (3) furniture, appliances, and yard equipment—$2,700; (4) other personal

property—$2,000, including $200 in cash and $200 in bank accounts or other marketable securities; and (5) one motor vehicle for an individual not to exceed $2,500, or two motor vehicles for the community the aggregate value not to exceed $5,000.[21] Pensions and most other retirement plans are generally exempt from execution under state statutes, but each statute must be carefully reviewed.

Obtain Judgment Against Employee

If the employee has not voluntarily transferred his or her property to the insurer and you have seized all available property through use of a prejudgment writ of attachment, you must reduce your claim to a judgment prior to selling the property. This requires that suit be filed and that either the employee stipulate to a judgment, the court grant summary judgment, or that the insurer prevails at trial. Once you have reduced your claim to a judgment, many legal and equitable tools are at your disposal to help you realize recovery, the most common of which is garnishment. However, ERISA exempts certain property from being garnished, such as pensions.

One difficulty you may face when attempting to reduce your claim to a judgment is that the employee has a constitutional right against self-incrimination and can refuse to answer questions until the criminal matter is resolved. Most of these criminal matters are resolved relatively quickly through plea bargains, but it helps to remind the U.S. Attorney's office or the state prosecutor that you are anxious to proceed.

Execute on the Judgment and Sell the Assets

The length of time that one has to execute on a judgment will vary by state. Execution may involve garnishment, foreclosure, or a sheriff's sale. A debtor may agree to a sale of the property without having to resort to such remedies. Generally, we encourage competing creditors to agree to a division of proceeds prior to a sale to make things go more smoothly.

Keep in mind that executing a judgment can be a tedious, time-consuming, and expensive process. For example, in the case of a residence that a debtor signed over to the insured, the carrier had to list the property for sale with a real estate agent, insure the premises, and hire a contractor to fix the roof. Therefore, it is important to make an early determination as to whether the property has sufficient equity to warrant a foreclosure and sale so as to prevent wasting your time and more money. Remember, you have a time limit from which to execute your judgment, and there is always a chance that the employee will get back on his or her feet some day. It may be advisable to bide your time. In many cases, the easiest route is to take a promissory note and put the employee on a payment plan.

Conclusion

In many cases, we have been able to obtain a favorable result for our clients when it initially appeared that there was no potential for recovery. It is important to gain as much information as possible during an initial interview in an effort to identify potential recoverable assets and property, and to streamline the process to establish liability by obtaining a confession. Securing your interest or taking possession of the employee's real and personal property needs to be accomplished as soon as possible. In addition, the employee likely has other creditors who will soon be staking claim to assets and property. In the typical situation where the employee will not voluntarily transfer his or her property, it is important to have your claim reduced to judgment. Once you have a judgment, you can use a number of remedies to assist in actually taking possession of cash, assets, and property. Do not forget that third parties may also be responsible for the loss. You may be able to realize recovery against accountants, banks, spouses, and friends of the dishonest employee. Remember, if you move quickly, you vastly improve your chances of securing a recovery in employee dishonesty cases. ■

Endnotes

1. See (e.g.) RCWA 62A.3 405.
2. *San Tan Irr. Dist. v Wells Fargo Bank,* 3 P.3d 11113 (Ariz.App. 2000).
3. RCWA 62A.3 406.
4. *Espresso Roma Corporation v Bank of America N.A.,* 124 Cal.Rptr.2nd 549 (1st Dist. 2002).
5. *Aetna Cas. and Sur. Co. v Hepler State Bank,* 630 P.2d 721, 6 Kan.App.2d 543 (1981).
6. *Weil v First Nat. Bank of Castle Rock,* 983 812 (Colo.App. 1999).
7. *J.R. Simplot, Inc. v Knight,* 988 P.2d 955 (Wash. 1999).
8. *Henrichs v Peoples Bank,* 992 P.2d 1241 (Kan.App. 1999).
9. *Fackrell v American Nat. Bank,* 116 P.3d 201 (Okla.App. 2005).
10. *Hydroculture, Inc. v Coopers & Lybrand,* 848 P.2d 856 (Ariz.App. 1st 1992).
11. *Seafirst Corp. v Jenkins,* 644 F. Supp., 1152 (W.D. Wash. 1986).
12. RCWA 26.16.030(2).
13. RCWA 19.40.041.
14. *Cross v Berg Lumber Co.,* 7 P.3d 922 (Wyo. 2000).
15. *Evans v Dean Witter Reynolds, Inc.,* 116 Nev. 598, 5 P.3d 1043 (2000).
16. *Itin v Ungar,* 17 P.3d 129 (Colo. 2000).
17. *Consulting Overseas Management, Ltd. v Shtikel,* 105 Wash.App. 80, 18 P.3d 1144 (1st Div. 2001); *State v Twitchell,* 832 P.2d 866 (Utah.App. 1992).
18. *Riddell v Edwards,* 12 P.3d 771 (Alaska 2003).
19. *Delk v Markel American Ins. Co.,* 2003 Ok. 88, 81 P.3d 629 (Okla. 2003).
20. *Bachrach v Salzman,* 981 P.2d 219 (Colo. App. 1999).
21. RCWA 6.15.010.

Creating and Maximizing Claim Assessment/ Audit Benefits

by Kathleen J. Robison, CPCU, CPIW

Kathleen J. Robison, CPCU, CPIW, has more than 30 years of experience with leading claims organizations, and possesses a wide range of commercial and personal insurance coverage knowledge and applicability. K. Robi & Associates, LLC, which she founded in 2004, provides customized consultant services in the property and casualty insurance fields, including expert witness testimony, litigation management, claims and underwriting best practices reviews/audits, coverage analysis, and interim claims management. Robison previously served as vice president, claims and operations at DaimlerChrysler Insurance Company, where she was responsible for claims and litigation management throughout the United States and Canada; and whom she led to ISO 9001 certification. Robison has served on national insurance boards and associations, including the CPCU Society, the former NAII (now PCIA); NICB; and ISO. She earned a B.A. from Western College; studied at the graduate level at the University of Illinois and Miami University; and completed numerous executive courses at Wharton Business School, the CPCU Society's National Leadership Institute, and elsewhere. Robison is a former NAIW "Claims Woman of the Year." She can be reached at (423) 884-3226 or (423) 404-3538; or at info@krobiconsult.com.

Claim assessments/audits are a fact of life for all claim professionals. They are conducted by reinsurers, insurance regulators, home office staff, and perhaps by an external firm retained by senior management. In the vast majority of audits, the results are expected with only a few occasional surprises.

Does it seem like it is impossible to gain points from a claims audit, and highly probable to lose points? Is it a risk without benefits? I say "no," not if one knows how to minimize the risk while creating and maximizing the benefits.

During the audit process, there are opportunities to learn more about your company's operations as they compare to insurance industry standard practice. How effective and efficient are they compared to other insurance companies? Through this informal gathering of industry benchmark data, valuable information can be gained. By asking probing questions and actively listening, claim professionals can increase their knowledge and awareness. This directly benefits them and their company.

Five Ways to Maximize the Benefits of a Claim Audit

1. Identify the Focus of the Claim Audit

Generally, the audit focuses on the total operation, as an overview of processes, procedures, and products. Before the audit begins, claims management should identify specific areas requiring more information or performance feedback within their operation. Ask the auditors to pay specific attention to these areas or issues. These industry professionals will provide a different perspective in the review, evaluation, and delivery of feedback. It can also be a learning and knowledge sharing opportunity incorporated into the normal audit process.

For example:

- A new line of business has recently been introduced. Ask the auditors to review the processes and procedures implemented for the new line. Is it working as planned? Can the auditors identify any gaps and offer explanations and reasons for the gaps? Are there any unintended consequences?
- Seek verification for new processes, a new philosophy, or new structure, business process outsourcing, reorganization, etc. that have been recently implemented. Are the results what were expected? If not, why not and what are possible solutions?
- Evaluate teamwork quality and cohesiveness. What is the relationship between home office to branch offices regarding communications, approval requirements; turn-around time frames, resources, knowledge management and sharing?

2. Set Daily Goals and Expectations During the Audit

During the audit period, claims management should arrive early and leave late. This allows time to communicate with the audit team. At the beginning of the day, discuss the auditors' schedules. What will they be reviewing? Do they need additional information, background briefing, or a more detailed understanding? Which members of the staff should be made available and when? Determine the appropriateness of each staff member and spend the time to brief them. This allows for open lines of communication with greater understanding on both sides.

At the end of the day, review with the audit team their activities and findings. Are there areas that need further clarification or more review? What are their questions, suggestions, recommendations? This is a prime opportunity to discuss with the auditors their experiences with industry best practices, benchmarking, process streamlining, successes, and failures, based upon their experiences.

3. **Ask the Appropriate Questions to Connect the Numbers**
   Ask specific questions that will give an outsider's perspective on your work product. Are there steps in the process that are redundant? What would be the effect of eliminating them? What are some of the trends within the industry? The more questions asked, the greater the level of understanding, knowledge transfer, and information shared. With an increased base of knowledge, an improved quality work product supports the business strategy. Listen with an open mind and be prepared to hear feedback that may be unexpected and possibly unpleasant.

   Often, final results are numbers driven. While it helps to know the percentage of files reviewed where contact was made within the required time frame, it is more beneficial to know the quality of the contact. How did the contact move the file toward resolution? Was additional information needed that could have been obtained at the first contact? In this way, the numbers become more useful. In discussions with the auditors, try to determine what factors are driving the numbers. Are there specific relationships between the various factors? Do these enhance or hinder the operational results and quality? This is the information that is vital to implementing the business strategy.

   When the factors driving the numbers are understood, then connect and compare the numbers being driven by similar or the same factors. Are the numbers at levels that one would consistently expect? Are any of the numbers in conflict with expectations? For example, initial contact statistics could be exceptional but the average time from file open to close could be less than desirable.

4. **Align Procedures, Processes, and Intentions**
   Audits provide an opportunity to obtain objective feedback on the operation. This can be the time to verify "that what you are doing is what you say you are doing." Are procedures being followed? This is particularly helpful with new procedures or work flows that have been recently implemented. Ask the auditors to review not only the results of the implemented new procedure, but the procedure itself. Has the procedure been implemented as planned? If not, what are the reasons? What are possible solutions?

   In this era of regulation such that as imposed by the Sarbanes-Oxley Act, it is important that the established processes and procedures be followed by all throughout the claim operations workflow. Don't let the lack of negative feedback in the form of bad-faith lawsuits, judgments, and customer complaints lead you to a false sense that all is going well.

5. **Do an Operations Overview**
   Often, claim assessments are centered on specific files, lines of business, etc. and as such are evaluated as individual components. Pull all those components together and analyze the operation as a whole. The auditors can advise if the total results being obtained are the results expected. Are there any trade-offs within the results? In obtaining one set of results are others hindered or compromised? How do the results compare with the industry? The auditors can also advise the operation's efficiency and effectiveness. If there are bottlenecks, identify opportunities to streamline processes. Based on their perspective, they may have ideas for better, more cost-effective processes and procedures.

Create the Benefits

Audits, reviews, and assessments all provide the opportunity to enhance one's knowledge base concerning the effectiveness and efficiency of the operation's policies, procedures, processes, and work product. Through discussions with the auditors, new insights and understandings can be gained about current successful industry patterns and practices. An audit's benefit is in maximizing the operation's effectiveness and efficiency while minimizing risk. ■

Claims Section—Circle of Excellence Submission 2006

The Claims Section is once again "Going for the Gold" in the Circle of Excellence (COE) and we would greatly appreciate your help. Anyone who is a section member (that means ***you*** since you are reading this) is urged to submit a brief record of any activity in which you participated, or will participate in, between July 1, 2005, and June 30, 2006, for addition to our 2005–2006 Circle of Excellence submission.

This is a great opportunity to "Spread the Word!" and get some recognition for your activities that support the CPCU designation, both for the Claims Section and you personally!

Please take a moment to visit the Claims Section web site of the CPCU Society at http://claims.cpcusociety.org, click on the gold Circle of Excellence graphic, and complete the very brief form, e-mailing it to the COE committee members shown there with any and all activities that you think might qualify.

For examples, you can review previous COE submissions at the web site by going to the home page for the Claims Section and clicking on the words "Circle of Excellence" along the left side.

Your Claims Section Committee thanks you!

Activities Can Include:

1. Conduct a symposium.
2. Conduct a workshop.
3. Conduct a turnkey project.
4. Publish articles (non-CPCU publications).
5. Conduct CPCU Annual Meeting seminar.
6. Conduct CPCU member symposium.
7. Conduct CPCU member workshop.
8. Conduct CPCU chapter meeting turnkey.
9. Develop CPCU turnkey program(s).
10. Prepare a research project.
11. Sponsorship program matching new designees.
12. Outreach program to national membership.
13. Local chapter outreach.
14. E-mail outreach.
15. Letter outreach.
16. Staff Annual Meeting Sections Booth.
17. Staff Annual Meeting New Designee Open House.
18. Staff I-Day Booths at chapters.
19. Creative activities:
    a. teach insurance courses
    b. talk about CPCU/insurance at local organizations (Optimists, Rotary Club, other community groups, etc.
    c. any other activity you think may "Spread the Word!" about CPCU/insurance

E-mail details to the Circle of Excellence Committee: **Barbara Levine J.D., CPCU,** (blevine@ecnime.com), **Eric J. Sieber, CPCU,** (EJSieberCo@aol.com), or **Ray A. Rose, CPCU** (rrose@hastingsmutual.com). ■

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