CPCU SOCIETY INSURING YOUR SUCCESS

Claims Quarterly

CQ

Volume 23 Number 2 May 2005

Chairman's Corner

by James D. Klauke, CPCU, AIC, RPA

"The critical responsibility for the generation you're in is to help provide the shoulders, the direction, and the support for those generations who come behind."

—Gloria Dean Randle Scott, Educator

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

The CPCU Society has requested that the Claims Section conduct seminars/symposia/workshops in your area of the country. These can be presented as a chapter meeting program of one hour, a chapter I-Day program of one to two hours, a half-day stand-alone program, or one combined with another section or chapter to fill an entire day-long program. The Claims Section has several programs "in the can" that can be easily converted to any of the above. These programs can be obtained from the Claims Section Committee and presented with a few hours' review of the program material. Naturally, you would need to have some experience in the subject matter. However, if you felt the need for assistance, the committee can help with qualified speakers in most areas of the country.

These seminars are then a source to the chapter for quality education programs in the field of claims. We would like to set a goal to have one of our Claims Section seminars/symposia/workshops in every chapter over the next three years. To accomplish this, the committee needs the help of its members. We ask that you consider organizing an education program for your chapter during your next chapter I-Day or other education activity. If you need help, just ask any of the Claims Section Committee members.

Our Claims Section Chapter Liaison Program is fully operational but we are in need of additional members to participate. We hope to complete our efforts to get a claims liaison in every chapter. As you may be aware, the Society likes to see its members contribute to the Society but understands that some have very busy jobs and employers that do not cover the expenses beyond the dues each year. The Chapter Liaison Program is a way to get involved in the Society without the need for incurring expenses nor taking a large amount of time away from your career. You need only attend your chapter meetings and send a note to the liaison subcommittee to advise of your chapter activities.

For those of you who have not been to the Claims Section web site lately, I encourage you to visit the site at http://claims.cpcusociety.org. There have been many changes and improvements. We are also moving forward with our issue questions and surveys. The minutes to the committee meetings are now included so you can see how the committee leadership is working for you. In addition, we are going to post the agenda for each committee meeting in sufficient time so you will have a chance to provide your input to the meeting. Just send an e-mail to the chairman and your topic will be included and discussed.

Continued on page 2

What's In This Issue

Chairman's Corner

Continued from page 1

"Thoughts are wonderful things; that they can bring two people, so far apart, into harmony and understanding for even a little while."

Earnest Pyle (1900–1945), Journalist

In order to continue with a coverage question or other issue question for the members on the web site, we need input from you. Do you have a question or issue you would like to see posted for member responses? Please send it to committee member **Andrew L. Zagrzejewski, CPCU, CLU, ChFC,** or **Arthur F. Beckman, CPCU, CLU, ChFC,** and they will format it for the web site. They can be reached at the following e-mail addresses: andrew.zagrzejewski@farmersinsurance.com; art.beckman.bltw@statefarm.com.

If your question is placed on the web site, we can arrange for you to get a copy of all responses or just a summary of opinions once all have been received. This is another way to get involved in the Society without a great deal of effort or expense. We realize that all carriers have rules regarding anti-trust issues so all coverage questions should not contain the name of any individuals or companies.

If you would like to consider national service, now is the time to volunteer. The national task forces and committees are selected before the Annual Meeting and Seminars each year. Our Claims Section Committee will have four openings following the Annual Meeting in Atlanta. Three of us have been on the committee for more than nine years and must leave because of the new Society rules that an individual can only serve three consecutive three-year terms.

Discuss this commitment with your employer, as the expense of attending is yours. The Claims Section Committee requires attendance at two meetings per year, one at the Annual Meeting and Seminars and one at the Leadership Summit in April. If you can handle the expenses or have your employer underwrite the service to the Society, you will never regret the additional demand on your free time. Volunteer service has always been a most rewarding experience, no matter what the service. ■

"How you spend your time is more important than how you spend your money. Money mistakes can be corrected, but time is gone forever."

—David B. Norris

Medical Billing Fraud: A Serious and Costly Reality

by Barbara Wolf Levine, J.D., CPCU

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

Medical billing fraud, just one component of today's rampant "health care fraud" syndrome, is a serious and costly reality for insurers and insureds. This type of fraud, which has been defined as "the deliberate submittal of false claims to private and/or public health insurance plans" is a "white collar crime" phenomenon that inflates insurance premiums by an estimated $250 per family per year. Medical billing fraud is hard to spot and difficult to prove. This article is intended to assist claim professionals in recognizing the "red flags" of medical billing fraud, with an emphasis on the most common fraudulent medical billing practices.

Fraudulent medical billing is difficult to notice because it manifests itself in many different forms. The subtle tweaking of a Current Procedural Terminology (CPT) code, billing for unnecessary diagnostic tests, charging an amount that is more than the usual and customary fee for the service in the geographic region where the service was rendered, or overutilizing modalities intended to produce the same results are examples of the different forms that medical billing fraud can take. With the heavy demands placed on insurance adjusters today (e.g., spiraling case loads, increasing regulations, handling multiple coverages), fraudulent billing practices often go undetected. These claims "slip through" the system, often without question, simply because proving that there was an intentional misrepresentation made in order for the provider to gain financially from the misrepresentation is especially difficult.

Property and casualty adjusters who handle medical claims see thousands of HCFA/CMS bills throughout the course of their career. Knowledge of Diagnosis (ICD-9) and CPT Codes are skills that are essential in spotting fraud.

Medical billing fraud is an everyday occurrence that may appear in the following ways:

1. Charges for treatment or services that were never rendered.
2. Charges for treatment or services rendered by physicians or their assistants who do not have the appropriate and/or necessary license to perform that service.
3. Improper use of CPT codes and modifiers.
4. Performing and billing for unnecessary diagnostic tests.
5. Misrepresenting non-covered treatments as medically necessary.

Charges for Treatment Never Rendered

When reviewing medical bills, an adjuster should take a cursory look at the dates on which the services were rendered. Do the treatment dates include holidays or weekends? If so, the adjuster should call the insured (if not represented) and confirm that the claimant was actually treated on those dates. In addition, the adjuster can ask the provider to produce a copy of the sign-in sheet or patient activity log for the dates in question.

Charges for Treatment or Services Rendered by Physicians or Their Assistants Who Do Not Have the Appropriate and/or Necessary License to Perform that Service

In order to perform certain medical procedures such as X-rays, MRIs, and massage therapy, the person providing the service must possess a valid license to do so in the state where the service is rendered. The claim adjuster should ask for a copy of these licenses if he or she suspects fraud. An honest provider would include a copy of all relevant licenses, or at least license numbers, with submission of the bill/claim form.

Continued on page 4

Medical Billing Fraud: A Serious and Costly Reality

Continued from page 3

Improper Use of CPT Codes and Modifiers

This type of medical billing fraud includes:

1. **Charging for a higher level of service than that which was actually performed, "upcoding":** Typically occurs under evaluation and management codes (office visits). For example, the medical provider may use a CPT code that indicates a complex and lengthy visit (i.e. 99204-5) when in fact the visit was brief and for a minor injury (proper code would have been 99201-99202). When should the adjuster question the level of service indicated via the CPT code? When the bill is not accompanied by sufficient documentation, or where the bill indicates a different tax ID number then the provider's. According to the CPT code guide, sufficient documentation would include:
   - the place of service
   - content of service (comprehensive, problem-focused)
   - nature of problem
   - time spent with patient

2. **Unbundling:** Unbundling occurs when the provider bills separately for services that are already included in one CPT code for the purpose of maximizing reimbursement. For example, the CPT code for chiropractic spinal manipulation 98941, pursuant to the AMA 2005 CPT Code guidelines, includes manipulation of three to four regions of the spine. A chiropractor may use code 98940 twice, indicating two different regions of the spine, when in fact the 98941 code would adequately cover the service. By using the CPT code 98940 twice, the provider will realize greater reimbursement.

3. **Improper use of modifiers:** A modifier is a two-digit number or letter that, when added to the five-digit CPT code, indicates that a procedure has been altered by some specific circumstance. Radiologic procedures provide a good example of using modifiers. A radiologic procedure has two components, the technical (TC) and the professional (26). If there is ***no*** modifier on a bill for a radiological procedure, it is considered a "global bill." Global bills include both the technical and professional component of the procedure. Commonly, the facility where the service was performed will bill the carrier a global fee. The carrier will pay the usual and customary amount for the test. A few months later, the carrier will receive a bill from the radiologist for the professional component only. If the radiologist is the same one used to initially interpret the images, this would be considered a duplicate bill. The adjuster should not pay this bill. It would be the provider's responsibility to obtain reimbursement from the facility that was originally paid "globally."

Performing and Billing for Unnecessary Diagnostic Tests

Diagnostic tests may be unnecessary for a variety of reasons. Some states have laws that do not allow reimbursement for certain diagnostic tests under first-party automobile insurance claims. Perhaps the test is only considered "experimental" (and, therefore, not usually covered). A diagnostic test is usually considered unnecessary if the results are entirely subjective, or if the results will have no bearing on the patient's treatment plan.

Diagnostic Test Fees

Many states have implemented "fee schedules" for certain diagnostic tests billed under automobile insurance claims. If the provider submits a bill that exceeds the fee scheduled amount, the carrier is not obligated to pay the difference.

Misrepresenting Non-Covered Treatments as Medically Necessary

This is widely seen with cosmetic-surgery bills. Non-covered cosmetic procedures such as "nose jobs," "tummy tucks," liposuction, or breast augmentations, for example, are billed to patients' insurers as deviated-septum repairs, hernia repairs, or lumpectomies.

The affects of medical billing fraud extend well beyond financial losses. When patients are routinely assigned false diagnoses that they do not have, these diagnoses become part of their permanent medical history. The patient will find it much more difficult and expensive to procure any type of health insurance. In addition, most health insurance policies have monetary limitations. Each time a fraudulent bill is paid, the amount left for legitimate bills are diminished. There are also physical risks involved when trusting patients submit to unnecessary surgeries, invasive diagnostic testing, and certain drug therapies.

The bottom line is that health care fraud is a serious crime. It legitimately concerns all parties to our health care system—insurers and premium-payers, government and taxpayers, and patients and health care providers. It is a costly reality that government and society cannot afford to overlook.

There are several local and national organizations that have joined together in an attempt to battle insurance fraud. For more information, check out the following web sites:

- Coalition Against Insurance Fraud
  http://www.insurancefraud.org
- National Healthcare Antifraud Association
  http://www.nhcaa.org
- International Association of Special Investigative Units
  https://www.iasiu.org ■

Five Random Thoughts about Subrogation Recovery

by Paul W. Burke, J.D., CPCU, ARe

Paul W. Burke, J.D., CPCU, ARe, is a partner with the law firm of Drew, Eckl, & Farnham in Atlanta, Georgia. He is a member of the CPCU Society's Atlanta Chapter and serves on the Claims Section Committee.

I have had the opportunity to assist insurance carriers with subrogation recovery for many more years than I care to think about. What follows are five "random thoughts" that I would like to share based upon my experience as subrogation counsel. Frankly, most of these experiences were bad ones. My successes as a subrogation counsel tend to blur and fade away, but those times when I have been "burned" in a subrogation claim have made a clear and lasting impression.

First Random Thought

Look Out for the "Waiver of Subrogation" Clause

If you are not familiar with these things, let me explain. A waiver of subrogation clause is exactly what it sounds like. More and more often now, parties to a contract will agree that if one of them "screws up," it will let its insurance company clean up the mess. They also agree that not only will they not sue each other about the mess, but they will make sure that their insurance companies will not either. They do this by waiving their insurer's subrogation rights. This is usually done without consulting the insurer.

At first blush, this seems to be basically wrong. How can an insured possibly give away its insurer's subrogation rights, without ever consulting the insurer? The bad news (if you are the subrogating insurance carrier), or the good news (if you are a liability carrier), is that the insured can.

The truth is, the courts love these clauses. They end litigation, and courts like that a lot. So the hard lesson here is to go looking for waiver of subrogation language that your insured may have agreed to before you invest a lot of time and resources in a potential subrogation claim. If you are dealing with a dispute that involves commercial leases or construction documents, there is a 99 percent chance that there is a waiver of subrogation clause hiding in the contracts somewhere. Save everyone a lot of time and trouble and go find it.

Second Random Thought

You Can't Always Get What You Paid . . .

Let's do this one by example. A homeowner has a kitchen fire claim. After diligent investigation, the insurer's expert determines that the fire was caused by an easily provable manufacturing defect in a toaster oven (. . . okay this is fantasy, but stay with me). The insurer pays the claim, which includes repairing the dwelling and replacing a number of personal contents. Ultimately, the insurer paid $100,000 to repair the house and replace the contents.

This is a slam dunk subrogation case and the insurer wants its $100,000 back. The good news is that the proof of liability is so solid, that the liability carrier for the toaster concedes liability and promptly offers to settle the case for $66,000. It claims this is all that it owes. It may be right.

When an insurer agrees to replace damaged items with new items, it has done so because it has agreed to in an insurance contract. As you will recall from your CPCU texts, replacement cost coverage is actually a windfall to the insured. The insured ends up, arguably, better off after the loss than before the loss. However, when you then sue the wrongdoer for the damages caused by its bad product, under the law of most states, the wrongdoer is only required to put the injured party back where it was before the loss happened. In other words, in the lawsuit, you can't recover for a new dinette set, you can only recover the value of a 10-year old dinette set. Even though the policy required you to replace the goods, you are most likely not going to be entitled to replacement cost value in a subrogation action.

Third Random Thought

The Economic Loss Rule Is Hopelessly Complicated

There is this thing out there called the "economic loss rule." I have a general understanding of it and I suspect that's about as good as anybody can hope for.

First, a little background on what the economic loss rule is.

In the middle of this century, a revolution of sorts occurred in the commercial laws of this country. The result of this "revolution" was the Uniform Commercial Code. One of the features of this new law was that it provided an elaborate framework for shifting the risk for damage to goods that were sold in this country. The most common method found in the commercial code for allocating this risk was the warranty. The general thinking was that the two parties to a contract to buy a product should, in that contract itself, decide who bears the risk if the product does not perform in the way it is supposed to.

Now, let's see how this applies in a subrogation case.

Say, for example, you insure a large steam turbine that has recently been installed in a plant. The steam turbine, unfortunately, does not perform as designed and destroys itself. The only real damage is to the thing itself. Under the economic loss rule, a subrogating insured will probably be limited in any recovery to what is stated in the sales contract—i.e., the warranty. If it is a limited one-year, parts-only warranty, that is all you will be entitled

Continued on page 6

Five Random Thoughts About Subrogation Recovery

Continued from page 6

to as the insurer. The traditional remedies of negligence and strict liability will not be available since the risk of damage to the product itself was allocated in the contract.

If, in the process of destroying itself, however, the steam turbine happens to destroy an entire building, those damages would not be covered by the economic loss rules since they would not have been accounted for in the contract for the sale of the goods.

Thus far, this kind of makes sense. Unfortunately, each state that has dealt with the economic loss rule has created so many exceptions to the rule that it is sometimes barely recognizable. It is out there and if you are trying to recover damages that include damage to the product itself, you will probably have to unravel how it applies to your claim.

Fourth Random Thought

Make Sure Your Insured Is On Board

Let's go back to the earlier example. There has been a kitchen fire and the homeowner's insurer has paid the claim. The insurer also brought in an expert who has found a defect in the toaster. The toaster manufacturer, however, this time does not accept liability and you have to sue. You have your expert, you have your evidence of damages (properly discounted from replacement cost), and you are ready to go.

What a nasty surprise when the lawyer for the toaster oven manufacturer takes the deposition of the insured and the insured rambles on about how your theory about the toaster oven is nonsense. As it turns out, the insured has not used the toaster oven in almost three months due to his joining the Adkins diet revolution.

Even if you have brought the lawsuit in the name of the insurance carrier, the jury will find the actual insured's testimony extremely compelling. Make sure the insured is kept in the loop and that the insured agrees with your theory.

Fifth Random Thought

Be Kind to Your Arbitration Panel

In many of your smaller claims, intercompany arbitration is going to be how the claim is resolved. One of the things we were taught in law school when preparing written arguments, is to be kind to the judge. In other words, make it easy. Simply attaching a stack of claims documents, photographs, statements, and a generalized statement of the claim is not being "kind" to the person(s) who will be deciding your arbitration claim.

For example, if you have an expert report that supports your claim, you should not just refer the reader to the report. Highlight that portion of the report (you may want to consider putting a tab on the relevant page) that supports your position.

If you have a recorded statement that supports your position, highlight and tab that portion of the statement that supports your position. If you have substantial documents in support of your damages, highlight and tab any summary documents such as the statement of loss or proof of loss. Make it easy and make it clear.

Again, all these random theories come from bitter experiences that I hope will spare you some of the problems they have caused me. ■

Getting to "Yes"

Attend the 2005 CPCU Society Annual Meeting and Seminars in Atlanta

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.

So you want to attend the CPCU Society's Annual Meeting and Seminars this year in Atlanta. You last attended when you received your designation. You enjoyed the educational sessions, the many interesting insurance professionals whom you met, and came away feeling you had learned a lot formally and informally. You are now reviewing the agenda and think, "Gosh, there is a lot of good stuff here. What I could learn, I could bring back and use right away in my current position. But the Annual Meeting is for new designees. Those are the only people going from around here."

Please think again. Our Annual Meeting and Seminars is our premier educational showcase. All CPCUs are invited and encouraged to attend. With more than 45 sessions available, one is guaranteed to find more than enough sessions to meet individual needs and desires than there are hours in the day. In fact, you might find yourself trying to select between two or three at one time.

So now all you have to do is to get your manager to agree that your attending the CPCU Society's Annual Meeting and Seminars would benefit the company. Here are some suggestions that have worked well for other CPCUs.

It Meets My Goals for This Year

Does your company have you establish your performance goals each year? Is one of your goals continuing professional development/training? Should one of your goals for next year be continuing professional development/training? If it is, then you have found a perfect sales tool. The Annual Meeting sessions abound with technical training and leadership development.

It Assists in Next Level Development

In discussions with your boss, has he or she mentioned skills that you should enhance and/or acquire for your current position or moving to the next level? If so, review the Annual Meeting agenda and show your boss the many sessions that will get you the specific training needed. If you have not had this type of discussion, initiate it with the Annual Meeting agenda in hand.

I Will Get the CE Credits I Need to Do My Job

Does your position require licenses resulting in continuing education credits? At the Annual Meeting and Seminars some attendees can accumulate up to 24 CE credits.

I Will Gain the Needed Knowledge for Our New Business Opportunities

Is your company considering new business endeavors, opportunities for growth in which you might be involved? If so, check the Annual Meeting agenda. You just might find sessions that cover the same areas. You can then demonstrate that your attendance at the Annual Meeting will enhance your knowledge, allow you to gain greater insights, and make key contacts that will enhance the company's future success.

I Will Contribute to the Company's Overall Efficiency through My CPCU Networking

Many of us in our business lives are facing the same issues—benchmarking, regulations, Sarbanes-Oxley, process management, knowledge management, etc. Meeting others who have faced similar issues is very beneficial. When you have the opportunity to utilize your network on a company project there are many savings. One type of savings may be time. The knowledge gained via the network may save the committee two hours of research. Thus "a" committee members x average wage costs x 2 hours = "b" amount of savings.

I Can Assist with Training and Knowledge Management

This is a constant endeavor. You can offer to bring back specific knowledge and share it within the organization. This could be accomplished through a written

Continued on page 8

Getting to "Yes"

Continued from page 7

report, writing an article for circulation, and/or doing training sessions for your peers.

However, you say, while these are all good points it still comes down to the costs—***the dreaded budget question.*** And you are correct. But most budgets contain some dollars for training.

To help your manager maximize the training budgets, you might offer any or a combination of the following:

- Reduce the cost of the airfare by using your frequent flyer miles.
- Reduce the hotel cost by staying at an offsite hotel within walking distance of the conference. Make sure that the offsite hotel you select is in an area where it is safe to walk at all hours. Share the hotel cost with a roommate. Perhaps you have friends or relatives who live in the same city as the Annual Meeting whom have been asking you when you are going to come out and see them. Now could be the opportune time.
- Forego the rental car and use the less expensive mode called public transportation.
- Offer to pay your own expenses (using the above tips) provided the company will pay for the Annual Meeting and Seminars registration fee.
- Offer to pay your own expenses and the Annual Meeting and Seminars registration fee provided the time you spend at the meeting is not counted as vacation.

Dollar for dollar the CPCU Society's Annual Meeting and Seminars is the best insurance educational, networking, and communication event you can attend. The return on investment is high for both yourself and your company. ■

Visit www.cpcusociety.org for complete Annual Meeting details and registration information.

See you in Atlanta!

Don't Miss This Annual Meeting Seminar Developed by the Claims Section

Perspectives in Financial Investigations

Monday, October 24
1:30 to 5:05 p.m.

This seminar will give tips on how to recognize key financial issues and use important financial information to evaluate an insurance claim at successive stages of a developing fraud investigation. Attendees will be able to appreciate and reconcile key issues and differing legal, managerial, and accounting perspectives on financial investigations.

Presenters

Thomas D. Martin practices civil litigation emphasizing first-party insurance defense, casualty coverage, and coverage litigation. His insurance practice includes arson and fraud insurance defense, where he has extensive experience assisting carriers where fraud is suspected in homeowners, auto, life, disability, and health insurance claims. Martin's insurance practice also includes insurance coverage defense in the context of both first- and third-party property losses. He joined Swift, Currie, McGhee & Hiers in 1987.

Tony D. Nix, CPCU, CIFI, is a 24-year employee of State Farm Insurance, where he has been a claim representative for the Fire Company and the Special Investigative Unit (SIU). Nix currently is a team manager for the State Farm Auto/Fire SIU in Atlanta; and is a resource to others in the industry, having served as guest speaker for the International Association of Special Investigative Units, the International Association of Arson Investigators, the National Insurance Crime Bureau, the Office of the Commissioner of Insurance for Georgia, the Georgia Fire Investigators Association, the Insurance Committee on Arson Control. He is a leader in the CPCU Society's Atlanta Chapter and Claims Section; and a director for the Georgia Arson Control Board.

Howard A. Zandman, CPA, a principal with the Atlanta-based CPA firm of Tauber & Balser, P.C., has practiced extensively in the insurance loss accounting area. Zandman has more than 30 years experience in forensic accounting, general accounting, auditing, consulting, taxation, insurance loss accounting, and financial analysis in both industry and the public accounting fields. He has testified as an expert witness in Federal and State Courts; and has been an appraiser and umpire in various disputes. He is a frequent for organizations such as Property Loss Research Bureau, Southern Loss Association, Georgia Society of CPAs, FDCC, ICLE, NICB, and numerous insurance companies and brokers.

Visit www.cpcusociety.org for complete Annual Meeting details and registration information.

E-Discovery and the Claim Adjuster

by Jonathan Stein, J.D., CPCU

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

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

Stein now is the principal of the Law Offices of Jonathan G. Stein where he also does expert witness work.

As technology improves, more documents are created electronically. Some estimates indicate that 90 percent of all documents are created electronically. Up to one-third of these documents may never be printed. When a document is created, not only does the document then exist, but various bits of data, some of them visible only to the computer, also exist. As commercial litigation proceeds and businesses are forced to deal with electronic discovery, claim handlers need to be aware of how this affects them, as well as how it affects counsel and the policyholder.

What Is E-Discovery?

With its most basic definition, e-discovery is discovery of any and all computer files and data. Some data, including temporary files and swap files, can be lost by simply booting up a computer. A sector-by-sector copy of the hard drive may avoid this. Some of this data may not even be in your possession, but rather the possession of a third party, such as an internet service provider (ISP) or another entity. While some question whether e-discovery is, or should be, different from paper discovery, there are intrinsic differences, including the types of documents available. The types of e-discovery documents involved may include e-mail (including dates, times, attachments), word processing files, tables, charts, graphs, database files, electronic calendars, proprietary software files, and Internet browsing applications, including bookmarks, cookies, and history logs. Further, people are usually more casual with electronic comments than they are with paper documents. Finally, electronic documents have metadata, data about data, that may not exist with physical documents.

Why Does E-Discovery Matter?

Congress and the courts have indicated a desire for preserving records that are capable of preservation. Booting a computer can destroy some types of data that may be relevant in litigation. The courts have noted that normal use of a computer may cause loss of data that is relevant to one party. *Antioch v Scrapbook Border, Inc.*, 2002 WL 31387731 (D.Minn. Apr. 29, 2002) Courts note that when one puts data in a computer system, there is an assumption that the user plans on retrieving data in the future. *Kaufman v Kinko's Inc.*, Civ. Action No. 18894-NC (Del. Ch. Apr. 16, 2002) And all of this may cost you money. *Rowe Entertainment, Inc. v The William Morris Agency, Inc.* 205 F.R.D. 421 (S.D.N.Y. 2002) (wherein the court developed an eight-factor test to balance who should pay the costs of e-discovery) Even if you do not pay for it, look out for the sanctions. Courts have imposed sanctions ranging from adverse inferences to preclusion of evidence to monetary sanctions to dismissal or default. *Residential Funding Corp. v DeGeorge Fin. Corp.* 306 F.3d 99 (2d Cir. Sept. 26, 2002) (imposing sanctions for mere negligence in destruction of e-documents)

Federal Rule of Civil Procedure 16 provides tools for maximizing the benefits of a pretrial meeting. Attorneys should use the pretrial conference as an opportunity to avoid future disputes, reduce costs, and avoid pitfalls. Being fully prepared at this conference may limit your client's exposure while maximizing your discovery from the other party. Further, Federal Rule of Civil Procedure 26 specifically requires the disclosure of electronic files, databases, and e-mails following an investigation into the case. The parties must determine the volume of e-mail and other electronic information, which may require an expert.

Continued on page 10

E-Discovery and the Claim Adjuster

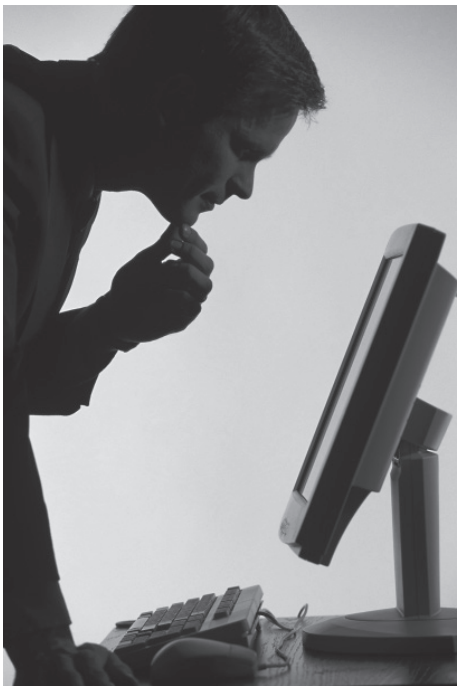
Continued from page 9

How Does E-Discovery Affect Counsel?

Each state court, along with the Federal Rules of Civil Procedure, differ on e-discovery. This article does not look to address all sets of rules, as there are some very good state-specific treatises on this. Rather, what follows is a short list of some of the e-discovery rules that are examplars.

In Illinois, documents include papers, photographs, films, recordings, communications, and all retrievable information in computer storage. (Illinois Supreme Court Rule 201(b)(1). Maryland has its own rule regarding computer-generated evidence. Every party wishing to offer computer-generated evidence must preserve it and furnish it to the clerk in a manner suitable for transmittal on appeal. (Maryland Rule of Civil Procedure 2-504.3)

If you want electronic discovery in Mississippi, you must specifically request production of electronic or magnetic data and specify the form in which you want it. The responding party to a request must produce data that is responsive and reasonably available in the ordinary course of business. The responding party may object if it cannot produce the requested items. If there is a court order to comply with a request, the court may order the requesting party to pay the expenses of any extraordinary steps taken to retrieve and produce the documents. (Supreme Court of Mississippi Rule 26(b)(5)).



Some courts have found that inadvertent disclosure of privileged data may risk a waiver of the privilege. Both the attorney-client privilege and the attorney work-product privilege are at risk if the document, even the e-document, is voluntarily disclosed to a third party. Even if a court later states that the document is privileged, you cannot, as the saying goes, "unring the bell." Additionally, if you produce documents, those documents may be able to be used against you in that case—or in other cases, you may have to produce all other documents related to that document, or your client may come after you for negligence if the client cannot retrieve the document. Assert any claim timely and invoke any rights that you may have under voluntary agreements. Additionally, make sure that the client is aware of the risks and decisions made so that the client is not surprised.

Courts may even impose sanctions for withholding or destroying e-data. *In Re Pacific Gateway Exchange, Inc.* 2001 WL 1334747 (N.D. Call. Oct. 17, 2001) One way to avoid this is to send a preservation notice to all parties who may have e-data. Additionally, counsel should make sure that the insured/client has a document retention policy and that all data is not destroyed pending the outcome of litigation. Tampering with or deleting evidence may result in monetary sanctions. *Pennar Software Corp. v Fortune 500 Sys. Ltd.,* 51 Fed.R.Serv. 3d 279 (N.D.Cal. 2001) Paper records of electronic documents may not suffice and may still result in sanctions because the electronic data may have unique evidentiary value. *Lombardo v Broadway Stores Inc.,* 2002 WL 86810 (Cal. Ct. App. Jan 22, 2002)

Remember that you should always examine the scope of the request to seek ways to limit the request—including limiting the time period or the places where the information is stored, i.e. certain computers, e-mail in-boxes, certain physical locations. All documents should be reviewed, and potentially privileged documents should be segregated for additional review. At the same time, you should also seek a protective order to protect the destruction of the other parties' electronic evidence.

How Does E-Discovery Affect the Adjuster's Job?

The attorney, and maybe more importantly, the adjuster, ***must*** advise the insured to suspend document retention policies that may, either intentionally or unintentionally, destroy data. Data destruction must stop immediately, and as the first line of defense, the adjuster is in the position to notify the insured immediately. When litigation has begun, or when it is pending, the adjuster must make sure the insured immediately halts all policies that result in the destruction of potentially relevant evidence. The adjuster should also recommend mirror-imaging technology to freeze the data in a "snapshot." Adjusters should make sure that they are involved in monitoring compliance—as this may have a huge impact on the final result. If possible, the adjuster should direct counsel to obtain a stipulation on what should be preserved. This should result in cost savings.

The insurance carrier should prepare a list of neutrals who are acceptable to use in handling of the parties' electronic evidence. Inexperienced people conducting computer forensic investigations may increase the costs—not only in dollars, but also in evidence sanctions. The neutral may capture data, store data, provide data to the court for

in-camera review, and present the data to the parties at the conclusion of any discovery disputes. This is different due to the nature of electronic discovery. The neutral must extract and restore the evidence from its electronic form to a form more readable by the court. By using a central depository, as is sometimes done in construction defect litigation, the neutral can conduct searches, show results to both sides, and then, if necessary, conduct additional searches for the parties. This may also significantly reduce costs.

Adjusters need to make sure that counsel has an electronic discovery plan. Further, adjusters need to understand that deleting files does not delete them, as there is still an electronic fingerprint that will lead to file information. This is especially important in bad-faith cases. Adjusters need to make sure, on report of a claim, that they confirm the existence of the insured's backup policy and document retention policy. Adjusters need to ask for all e-mails that may be relevant, from anyone at the insured. Adjusters should not take this on alone—there must be a plan for the entire insurance carrier.

There are some further steps that the adjuster and counsel can work on together. First, retain an expert in e-discovery, preferably someone who knows the industry of the insured. Second, demand e-discovery from the opposing side in writing, with a request that it preserves all data. Third, attend any conferences regarding e-discovery so the adjuster is in the loop on what is being requested. Fourth, make sure that any discovery that comes in is in a readable and searchable form. Fifth, find out who the knowledgeable representatives from the insured are regarding e-discovery so as to properly review any problems that may arise. Sixth, consider using a special master regarding e-discovery.

Conclusion

In this ever more technological world, the adjusters job is constantly changing. In addition to added demands of the job, the increase in e-discovery is going to affect how an adjuster interacts with the insured and the attorney. Violations of the e-discovery rules may result in an adverse result to the insured, thus increasing the pressure on adjusters. All adjusters who handle litigated cases must stay on top of local, state, and federal rules of e-discovery to adequately protect the insured. ■

Workers Compensation Italian Style

by Emanuela Turri, AIC

Emanuela Turri, AIC, is deputy claims manager with XL Insurance. She currently lives and works in Milan, Italy.

Turri graduated from the Catholic University of Milan in early 1996 with a degree in law, following which she worked in London for BDB Insurance Brokers for a year.

In 1997, she accepted employment with Winterthur International in Milan, Claims Department.

She attended a master's program in loss adjustment in 1999 at the Polytechnic University of Milan, which she completed in a year and was awarded Best Student of the Year. In 2002, she commenced her studies to obtain the AIC designation, which she completed last June.

I recently completed a course on handling U.S. workers compensation claims for those who normally work in the U.S. insurance environment. This was a great opportunity for me because I was able to compare both the U.S and Italian systems. To date, the rate of work-related bodily injury claims remains high in Italy despite the introduction through the last decades of very strict work-related safety laws. Although these laws aim to reduce the injury frequency and severity, they have not so far had the desired effect.

In most jurisdictions in the United States, workers compensation is considered the exclusive remedy for any worker who suffers an injury arising out of and in the course of employment. Workers are provided benefits almost exclusively by private insurers with the exception of monopolistic state funds and self-insured employers.

In Italy, the system is fundamentally ruled by a governmental entity called the National Institute of Insurance for Injuries Suffered at Work (INAIL). INAIL was instituted to handle and compensate the financial losses of injured workers. The role of private insurers differs from those of their U.S. colleagues.

The financial damages an Italian worker (or his or her dependents) suffer following a work-related accident do not exhaust the indemnity he or she is legally entitled to collect, because the compensatory system is not exclusive. The injured worker maintains the right to sue the employer in tort, independent from his or her right to be financially compensated for lost wages. This right automatically follows the determination by INAIL that the injury is work-related and that it has caused the worker to incur a temporary or permanent wage loss.

How Does the INAIL System Work?

First of all, INAIL operates regardless of liability. All Italian employers are required by law to insure all their employees with INAIL.

Employers are also obliged to promptly notify the INAIL following a work-related accident. This includes injuries that occur while workers are commuting.

During the period the worker is disabled, the employer has the duty to provide the payment of the wages as if the injured employee continued to work (a waiting period of three days generally applies). Once the worker returns to work, the employer is almost entirely refunded by INAIL for the temporary total disablement wages paid to the worker. Hence, unlike in the United States, the employer maintains the duty to pay a disabled worker.

When a worker suffers a bodily injury that results in a total or partial disability, the ensuing loss for the worker is paid by INAIL, provided it exceeds a statutory deductible of 6 percent, which was established with the new compensation statutes in 2000 (Decreto Legislativo n.38/2000). INAIL has the worker examined by its own physicians to determine when this percentage has been

exceeded. Bodily injuries that do not exceed the 6 percent are not indemnified by the entity because they are considered at a level that does not deserve social consideration and protection. In these cases, INAIL simply refunds the employer for the wages paid to the disabled employee.

Workers who are excluded from the INAIL benefits are entitled to file an action against the employer in tort to collect both special and general damages such as medical expenses; pain and suffering, an indemnity for having even temporarily lost their ability to attend their daily non-professional occupations; and an indemnity for having permanently lost their general physical integrity. This last item of damages is called "danno biologico" or biological injury.

In the determination of the employer's fault, the courts' trend is to consider it in fact almost a strict liability, even though a civil code legal environment technically does not provide for the concept of strict

liability. The U.S. traditional defenses for the employer (such as the employee's assumption of risk or the negligence of a fellow employee) are in practice ignored in the Italian environment, due to a body of laws that have led courts to a strict interpretation against employers.

The role of the private insurer becomes clear in this environment. Employers need to purchase employers liability coverage to protect themselves against claims made by workers who have suffered minor injuries and to protect themselves from suits.

For more serious injuries that exceed the statutory deductible but are not higher than a threshold of 16 percent, INAIL will provide payment referred to earlier as "danno biologico." This is calculated on the basis of a scale conceived by INAIL, which is not related to the wage of the injured person.

For bodily injuries that exceed the threshold of 16 percent, the worker also receives compensation directly from INAIL for the loss of wages that follows a permanent total or partial but serious disability.

INAIL, as mentioned before, works according to a compensatory principle. However, it can recover from any liable party that has been determined to have in some way caused or contributed to the work-related accident, including the employer. Thus, whenever the employer is found to be at fault, which is not uncommon in the administrative and criminal investigation that follows an accident at work, the social insurer INAIL subrogates by asserting a lien against the employer to recover any sums paid to the worker.

Employers liability coverage is designed to cover these claims, which can be substantial, not only because of the seriousness of the injuries but because of the lack of use of medical rehabilitation aimed at early return to work of the employee as seen in the United States.

The exposure faced by employers in Italy is increased because of the lack of an exclusive compensatory system. Workers who have incurred a work-related accident and are found to have a permanent disability exceeding the statutory deductible of 6 percent are entitled, just like those who do not reach the threshold, to sue the employer to collect the general and special damages. This compensation is in addition to the benefits collected from the social insurer and proportionate to the seriousness of the bodily injury. Dependents are also legally entitled to make a claim for any consequential loss, pain and suffering, discomfort, and the like.

Another aspect that complicates the picture is that the statutory scales on which the social insurer, INAIL, calculates the compensation for disabilities exceeding 6 percent are lower than those used by courts to calculate the same item of damage (danno biologico). This leads the injured workers to sue the employer in order to obtain the difference between what has been paid by INAIL and what he or she is legally entitled to obtain. Employers' liability policies provide for this coverage.

In Italy, general damages can be roughly quantified by the insurer and are not as volatile as in the U.S. courts where jury verdicts dominate the scene. Yet, the final cost, both direct and indirect, generated by an employer's liability claim is substantial because of the complexity of a system that refuses to change. ■

Claim Adjusting—Alaskan Style

by Ferdinand J. Lasinski, CPCU, AIC, AMIM

Ferdinand J. Lasinski, CPCU, AIC, AMIM, is a general adjuster with Northern Adjusters, Inc., in Anchorage, Alaska. He received his CPCU designation in 1989 and is a member of the CPCU Society's Alaska Chapter and serves on the Claims Section Committee. He has also completed the Associate in Marine Insurance Management (AMIM) and the Associate in Claims (AIC) designation programs. He is active in the PLRB and the LAE Associations, has been a speaker at many industry functions, and continues to be called upon for his expertise. His career has included positions within the states of Illinois, Missouri, and Alaska.

At –22° F, the one-mile walk from the icy landing strip to the village center seems more like a marathon today. Balancing my load of electronic "convenience" tools—a laptop, measuring devices, multiple cameras (should one fail), backup batteries for each—I find it difficult to shield my face from the penetrating wind. I enter the Head Start building, and a small group of inquisitive children approach me to learn why a stranger is in their village. As I appease their curiosity, I am thankful that heat has been restored and my eyes can adjust from the blindness caused by the sun's reflection on a sea of snow.

A week ago, the multiple boilers servicing the building had been compromised by fuel deprivation due to a design problem in the HVAC system. After its discovery, a mechanic made the flight from Bethel to restore heat and begin the process of thawing the building. The plumbing and sprinkler systems require extensive repair. Although this type of loss is not unusual in the colder climates of the Lower 48, servicing them in Alaska presents multiple challenges—bringing in tradesmen from the larger communities nearby, finding an available general contractor, freighting materials by air from Seattle, travel expense for the tradesmen, and the fluctuating costs of freight and material due to volatile oil and steel markets.

The scope of damage is prepared and presented to the contractor as a job budget. Accurate job cost estimates are difficult to determine due to variables of freight, travel, overtime labor, per diem allowances, and delivery of materials to remote Alaska. For this project, the adjustment cannot be determined until the job is invoiced. The contractor accepts my budget. Agreement is reached on labor rates and markups. The contractor agrees to submit material invoices from vendors and employee timesheets with final billing in order that I might determine compliance with the agreement and adjust the claim.

The post office and village center in Kongiganak, Alaska.

My return flight is late. The local agent calls the Bethel Airport and learns that all flights are cancelled due to a fog that is not likely to lift until evening. The local air taxis only operate in daylight. In hospitality, the village offers a cot at the Head Start building and dinner with the administrator's family. An overnight stay would force me to reschedule tomorrow's appointments and put my inspections another day behind. After some inquiry, I learn that a village employee is coming from Bethel by snow machine to pick up a stranded employee. I am offered a ride. Assuming that another snow machine would be brought for our use, I am taken aback when one snow machine pulls up to the Native store and the driver calls for me. The driver connects a wooden sled to the snow machine, offers a snowsuit, and guides me to the back of the sled. Before buckling down, I consider that my purchase of warmer gloves and hat at the Native store for $48.50 is a wise investment.

Ferdinand Lasinski's prop plane—his mode of transportation into Kongiganak.

Lasinski walking to inspect a property loss with his backpack of electronic claims investigating tools.

The extreme cold and lack of suspension system on the sled does not allow for much sightseeing. Hunkering down, face in my coat, I force my mind to wander from the present circumstances. We arrive at the Bethel Airport 90 minutes later, and I feel blessed to see the Alaska 737-200 making its approach.

Tomorrow's plans call for island hopping from Juneau to service a fire at a seasonal lodge in another remote village. I wouldn't have it any other way. ■

Lasinski's taxi ride back to the airstrip after inspecting the property claim.

Institutes' April 2005 Report to the CPCU Society

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

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

The American Institute for CPCU and the Insurance Institute of America (the Institutes) have submitted their annual report to the CPCU Society's Board of Governors. The report informs the Society of the Institutes' activities over the past year as well as planned initiatives for the coming year.

The Institutes had estimated the 2004 CPCU class at 1,350. The 2004 CPCU class consisted of 1,322 people. For 2004, the Institutes had set a target of enrolling 4,700 new students. At the end of the November–December 2004 testing window, 3,897 new students had been acquired, which is 803 fewer than the goal. Part of reason for the shortfall in new students may be due to the devastating 2004 hurricane season and to insurance company reorganizations. It is unclear how these and other factors will affect CPCU examination numbers.

Since conferment will be held in Hawaii in 2007, the Institutes anticipate significantly smaller CPCU classes than might otherwise be expected in 2005 and 2006. In the past, CPCU students have adjusted their completion schedules to receive the designation in Honolulu, resulting in much larger than normal classes during those years. The Institutes are projecting that there will be 870 members in the 2005 CPCU class.

In 2004, we administered 18,046 CPCU exams and 58,779 IIA exams, for a total of 76,825 exams administered. While this number represents an overall 0.23 percent decrease from exams administered in 2003, IIA exams administered were up 1.74 percent. See Table 1.

Institutes Online class enrollments reached 1,500 in 2004, representing a 27 percent increase over 2003. A major reason for this increase is Liberty Mutual's adoption of CPCU online classes. The Institutes currently offer instructor-led classes via the Internet for the CPCU program, the Program in General Insurance (INS), and the Associate in Claims (AIC) program.

CPCU Advisory Committee

The Institutes continue to strive for excellence in their curriculum. To that end, the Institutes have established a CPCU Advisory Committee, which consists of insurance industry professionals and academicians with backgrounds in risk management, insurance, finance, and law. Working with members of the Institutes' Curriculum Department, the committee's goals are to:

- Analyze the characteristics of potential and current CPCU candidates and the implications these characteristics have for the program's curriculum.
- Obtain input on the educational needs of potential and current CPCU candidates.
- Evaluate the overall content and presentation of the CPCU courses.

The following are the committee members and the subcommittees to which they belong:

Foundation Courses Subcommittee I

Richard L. Bennett, CPCU, ARM, ARe,
St. John's University

Mark J. Browne, Ph.D.,
University of Wisconsin-Madison

Richard A. Derrig, Ph.D.,
OPAL Consulting LLC

Elise M. Farnham, CPCU, ARM, AIM,
GAB Robbins

Steven M. Horner, CPCU, AIM, ARM,
Horner & Associates LLC

Robert E. Hoyt, Ph.D.,
University of Georgia

Table 1

	Exam Activity 2003	Exam Activity 2004	Difference
CPCU	19,221	18,046	-6.11%
IIA*	57,776	58,779	+1.74%
Exam Total	76,997	76,825	-0.23%

*Reflects addition of new AAI segment exams.

Foundation Courses Subcommittee II

Dennis M. Bandish, CPA, Michigan Millers Mutual Insurance Company

Eric A. Fitzgerald, J.D., CPCU, ARe, Marshall, Dennehey, Warner, Coleman & Goggin

Joseph A. Gerber, Cozen & O'Connor

Stanley L. Lipshultz, J.D., CPCU, Lipshultz & Hone Chartered & Interisk, Ltd.

Ronald M. Metcho, CPCU, ARM, AAI, Saul-Metcho Insurance

James A. Sherlock, CPCU, ARM, ACE INA

Stephen J. Trecker, CPCU, AIM, XL Insurance

Commercial Courses Subcommittee

Chris Amrhein, AAI, Amrhein and Associates, Inc.

Samual A. Brand, CPCU, Simkiss Agency

Harold J. Fink III, CPCU, NJM Insurance Group

Joseph S. Harrington, CPCU, ARP, American Association of Insurance Services

John J. Kelly, CPCU, ARM, AAI, CPCU Society

Gregory J. Massey, CPCU, CIC, CRM, Selective Insurance Group, Inc.

Teresa A. Pavlin, CPCU, ARM, APA, ACE INA

Personal Courses Subcommittee

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Michele F. Davis, Employee Benefits Consultant

Steven A. George, CPCU, CLU, USAA

Frederick P. Hessenthaler, CPCU, Chubb & Son

Dennis F. Mahoney, CEBS, CFP, The Wharton School—University of Pennsylvania

David J. Nye, Ph.D., University of Florida

Kent Schaum, CPCU, AIC, Mass-Tel Communications, Inc.

The CPCU Advisory Committee met twice in 2004 and will meet next in September 2005. In addition to the new CPCU Advisory Committee, advisory committees have been established to analyze the educational needs of IIA students and review course content to ensure that it meets their needs. The committees consist of experts both in business and in academia.

Educational Partnerships

Working with organizations in countries with developing economies and insurance systems to establish risk management and insurance education programs is a natural extension of the Institutes' educational mission. The Institutes have partnered with the LOMA Institute of Greater China (LIGC), a provider of life insurance-related education in China, to establish the CPCU Institute of Greater China (CPCUIGC). Greater China includes Mainland China, Taiwan, and Hong Kong. Through CPCUIGC, which will become a legal entity in 2005, the Institutes will translate CPCU textbooks into Chinese over a three-year period, in addition to administering examinations in both simplified and traditional Chinese.

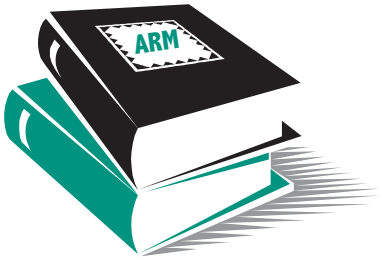
Additionally, the Institutes have signed agreements with the following institutions to accept CPCU and IIA credits toward an online certificate and associate's, bachelor's, and master's degrees: Boston University; Capella University; Drexel University; Excelsior College; Franklin University; New England College of Finance; New York University's School of Continuing and Professional Studies; University of California's Berkeley Extension; University of Maryland, University College; and Walden University.

These agreements benefit both students and their employers. Students' learning and employers' educational expenses count toward both a college degree and a professional designation at the same time.

The Institutes have also partnered with state Independent Insurance Agents & Brokers of America (IIABA) associations to offer the Accredited Adviser in Insurance (AAI) program in a seminar format. The project involves more than a dozen state IIABA associations and several employers. Each state association files the AAI seminars for continuing education credit. Since the inception of the program, nearly 7,000 AAI seminar-based exams have been administered.

Responding to customer requests, the seminar format approach has been expanded to the Associate in Risk Management (ARM) program and will expand to include the Associate in Claims (AIC) program and the Program in General Insurance (INS) in 2005.

Associate Program Restructuring



The Institutes began a major restructuring of the Associate in Risk Management (ARM) program in 2004; the work will continue through 2005. Working with risk management experts, the Institutes are developing new texts for ARM 54—Risk Assessment, and ARM 55—Risk Control.

The *Risk Assessment* text will emphasize assessing property, liability, net income, and personnel loss exposures. New chapters on management liability and

Continued on page 18

Institutes' April 2005 Report to the CPCU Society

Continued from page 17

corporate governance have been added. This course will include enhanced instructional design features, as will ARM 55.

Risk Control contains updated chapters with expanded material on contemporary issues, including cyber crime and terrorism, risk management of intellectual property, and workplace violence and sexual harassment. A claim administration chapter was also added, with emphasis on the claim adjustment process and litigation management.

The new texts will be published in August 2005, with exams covering the texts to be given for the first time in the January–March 2006 testing window. The text for the third course, ARM 56—Risk Financing, will be published in 2006.

The Institutes also completed a major restructuring of the Associate in Reinsurance (ARe) program in 2004. Working with reinsurance experts, a number of whom are members of the CPCU Society's Reinsurance Section, the program has been made more concise, thorough, practical, and timely. The program now consists of the following:

Required Courses

- ARe 143—Primary Insurance Coverages
- ARe 144—Reinsurance Principles and Practices
- ARe 145—Readings in Reinsurance Issues and Developments
- CPCU 520—Insurance Operations, Regulation, and Statutory Accounting

Electives (choose one)

- CPCU 540—Business and Financial Analysis for Risk Management and Insurance Professionals
- ARM 56—Risk Financing
- AIAF 111—Statutory Accounting for Property-Casualty Insurers

ARe 145, a new online readings course, allows students to study recent articles on both primary insurance and reinsurance theory and practice.

If students passed both ARe 141 and 142 as of January 1, 2005, they are permitted to complete the program under the old four-course curriculum.

Insurance Executive Leadership Program

Debuting in 2005, the new Insurance Executive Leadership (IEL) program is designed specifically to meet the changing professional development needs of senior risk management and insurance executives. IEL focuses on competitive strategy and strategic thinking. It provides practical and up-to-date knowledge to assist participants in developing a strategic vision for their own organizations. It also explores important perspectives across the key executive leadership areas of finance, marketing, and information systems. This new program complements the current Insurance Executive Development (IED) program, which is designed for executives who aspire to the senior ranks. Both IED and IEL are two-week residency programs held at The Wharton School, on the campus of the University of Pennsylvania in Philadelphia.

Insurance Research Council Update

The Institutes' Insurance Research Council (IRC) published four major research projects in 2004:

- *Auto Insurance Claims in California: A Research Perspective on Regional Differences* emphasizes urban and rural distinctions among auto claims in the state.
- *Paying for Auto Injuries: A Consumer Panel Survey of Auto Accident Victims, 2004 Edition* explores aspects of auto injuries from the perspective of accident victims. Topics include treatment, losses, compensation, attorney involvement, and satisfaction with settlement.
- *Fraud and Buildup in Auto Injury Insurance Claims* examines the occurrence of fraud and buildup as well as associated claim characteristics.
- *Interstate Comparison of Auto Injury Insurance Claims* focuses on auto injury insurance claim comparisons among states; findings from tort/add-on, no-fault, and choice states are discussed in separate reports. ■

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Claims Section Committee Member Profile

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Paul W. Burke, J.D., CPCU, ARe, is a partner with the law firm of Drew Eckl & Farnham in Atlanta, Georgia. Burke joined the law firm in 1983, shortly after graduating from Stetson University College of Law with honors. Drew Eckl & Farnham is one of the largest law firms in the southeast focusing on the representation of the insurance industry. His practice focuses primarily on property insurance, reinsurance, subrogation, and cargo claims.

Burke was inspired to work toward his CPCU designation and his ARe to help him keep up with the increasingly complex insurance matters he was litigating. As his practice expanded into reinsurance, his need for a broader understanding of the entire insurance industry became clear and he started working toward both his ARe and CPCU designations. He received his ARe in 2001 and his CPCU in 2002. Burke is on the CPCU Society's Atlanta Chapter Board of Directors and is proud to be a new member of the national Claims Section Committee.

Burke is also a vice chairman of the American Bar Association's Property Insurance Law Committee and is a regular speaker for the PLRB. He has published numerous articles in the property insurance, subrogation, reinsurance, and cargo fields.

Burke graduated from the University of the South in 1980 and from Stetson University College of Law in 1983. He is a member of the Georgia Bar, Alabama Bar, and Florida Bar, and actively litigates in all three states. Burke and his wife, Amy, live outside of Atlanta with their four children. ■

Claims Quarterly
is published four times a year by and for the members of the Claims Section of the CPCU Society.
http://claims.cpcusociety.org

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Claims Quarterly

Volume 23 Number 2 May 2005

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