

Message from the Chair — Select a Primary Interest Group

by Tony D. Nix, CPCU, CIFI



Tony D. Nix, CPCU, CIFI, is a special investigations unit (SIU) team manager for State Farm in Atlanta, Ga., and has been employed with State Farm for 27 years. He obtained his bachelor's degree in management from the University of West Georgia in 1980, and earned his CPCU designation in 1999 and the CIFI (Certified Insurance Fraud Investigator) designation in 2000. Nix has served on the Claims Interest Group Committee for the last six years and is an active member of the CPCU Society's Atlanta Chapter, with prior service as director, secretary, president-elect and president.

Over the last several months, the CPCU Society, like other organizations within the industry, has undergone some restructuring. The focus of these actions has been directed at answering the question: How do we best serve our current membership and continue to evolve the CPCU Society to meet the challenges and opportunities of the future? Two areas of change most noticeable are the governance of the Society and interest group membership. As a part of the recent membership enhancements, all CPCU Society members have access to all material produced by the 14 interest groups. My guess is that in the recent past you have begun receiving information from the other interest groups seeking your input and involvement. The variety of subject matter within the interest groups is tremendous, and I encourage you to take advantage of all those groups that interest you.

The Claims Interest Group Committee had our annual meeting in Denver, Colo. As a part of our discussion on the committee's ongoing activities, we realized that there are Society members who probably do not have an understanding or awareness of what interest groups are all about. Thus, I thought that I would take this opportunity to share some information about the Claims Interest Group with our membership. Our mission statement states that the Claims Interest Group "promotes discussion of enhancing skills, increasing consumer understanding and identifying best claims settlement tools." As a committee, we continuously seek ways to add value in being a member of the Society and selecting the Claims Interest Group as your primary area of interest. The Claims Interest Group is routinely

Continued on page 2

What's in This Issue

Message from the Chair — Select a Primary Interest Group	1
From the Editor	3
Notice of Loss Requirements — Changes in New York's Insurance Law — A Statutory Solution	4
Understanding Generations	6
Effective Management of Claim Legal Costs Includes E-Invoicing	9
Tomorrow's Coverage Disputes over Data Breaches — A Deluge or a Dud?	11
Claims Interest Group Committee Welcomes New Member	13
Claims Interest Group Webinars — 2009 and Beyond	14
2009–2010 Claims Interest Group Committee	15

Message from the Chair — Select a Primary Interest Group

Continued from page 1

one of the largest interest groups in the Society. Currently the committee consists of 18 members from various companies around the U.S. We meet as a committee at the annual Leadership Summit and the Annual Meeting and Seminars. In addition, subcommittees of our group meet via conference calls throughout the remainder of the year. The following are areas of activity developed for our membership:

- *Claims Quorum* newsletter.
- Periodic webinars presented throughout the year.
- Educational seminars presented at the Annual Meeting and Seminars.
- Circle of Excellence submission.
- Claims Interest Group Web site.

The information available to our membership through the vehicles mentioned above is second to none. In an effort to address the interest of the audience, we are always looking for input from our membership. Thus, if you have recently written an article on subject matter that you think might be of interest to the rest of our membership, I encourage you to submit it to our editor of the *Claims Quorum* for consideration for a future issue. Many of our members have submitted information to be included in our Circle of Excellence submission. This year the Claims Interest Group was awarded “Gold with Distinction” for our submission.

Our goal is to do the same in 2010. The Web site is an excellent tool for researching articles on a variety of topics and keeping up with the activities of the committee. In 2009, we presented two informative webinars; and we are currently planning our next one, likely to be presented in early 2010.

As you can see, the Claims Interest Group Committee is an active group of professionals dedicated to providing educational and career development opportunities to our membership.

It is requested that each current CPCU Society member designate a primary interest group and indicate whether he

or she wishes to receive its newsletter in hard copy. Instructions for making that selection are as follows:

Go to www.cpcusociety.org.

Log in. Here are log-in instructions:

- Your login is your last name plus the last three digits of your Member ID number. When typing your login, do not include spaces or punctuation marks such as apostrophes. Hyphens are allowed at this time.
- Your password is your four-digit year of designation, a forward slash “/” and then your seven-digit Member ID number.
- A representative password would be 2000/2000000, where your year of designation is 2000, and your member number is 2000000.

Your Member ID number can be found on your membership card, 2010 dues invoice, a Society receipt or your *CPCU News* address label.

How to Select a Primary Interest Group

CPCU Society members now have access to the resources of all Society interest groups, including all interest group information and publications on the Web site.

You may identify any one of the 14 interest groups as your primary area of interest or career specialization. You can also identify your preference as to how you wish to receive an interest group's newsletter.

Once you are logged in to the Society's Web site:

- In the top blue menu bar, click on “Interest Groups” to begin the interest group selection process.
- Scroll down to the Interest Group Selection Form. In the first column, identify any one of the 14 interest groups as your primary area of interest. In the third column, identify how you would like to receive your primary interest group newsletter — a printed copy by mail or an e-mail alerting

you when a new newsletter is posted online. (The e-mail also provides a link to that newsletter's PDF.)

How to Select Other Interest Group Newsletters

In the second column, you may identify other interest groups that may be of interest to you. (There is no limit.) Once you select an interest group, scroll over to the third column and indicate if you would like e-mail notification of when a new newsletter is posted online or if you would rather access a copy by periodically checking the interest group's Web site. (Note: You will also see a printed copy option, but that selection is unavailable if you have already opted for a print copy for your primary interest group.)

If you wish to receive more than one newsletter in the mail, they are available for an additional fee. Please contact the Member Resource Center to order additional printed newsletters, by calling (800) 932-CPCU, option 4, or via e-mail sent to membercenter@cpcusociety.org.

Once you've made all your selections, make sure to hit the “Save” button.

I would encourage everyone to go online and make your selection to ensure that you continue to receive the full value of your membership in the CPCU Society. ■

Select your primary interest group from any of the following:

- Agent & Broker.
- Claims.
- Consulting, Litigation & Expert Witness.
- Excess/Surplus/Specialty Lines.
- Information Technology.
- International Insurance.
- Leadership & Managerial Excellence.
- Loss Control.
- Personal Lines.
- Regulatory & Legislative.
- Reinsurance.
- Risk Management.
- Senior Resource.
- Underwriting.

From the Editor

by Keithley D. Mulvihill, CPCU, J.D.



Keithley D. Mulvihill, CPCU, J.D., is a resident partner in the Pittsburgh, Pa., office of Rawle & Henderson LLP, a defense firm with offices throughout the mid-Atlantic region. Mulvihill graduated from the University of Pittsburgh School of Law in 1981. He obtained his CPCU in 2000. Mulvihill's practice focuses on defense of product liability matters, including toxic tort cases, insurance coverage, and general defense matters such as professional liability. He is active in the CPCU Society's Allegheny Chapter, where he has provided insurance law updates for the chapter's newsletter and at all-industry days and other meetings.

This issue of *Claims Quorum* continues our practice of trying to provide helpful information on both technical and management issues facing claims professionals.

Attorneys **Robert A. Fitch, J.D.**, and **David P. Turchi, J.D.**, provide an update on issues related to enforcing prompt notice of claim provisions. Their article focuses on a recent change in New York's insurance statute that will make it much more difficult to deny coverage based on late notice of a claim. New York had long been insurer friendly with regard to late notice, but the new law moves New York decidedly in the other direction.

In this issue's first article on management, **Stacie Lightner** addresses some of the issues involved in managing workers of different ages. At one time, it may have been possible to manage by interacting in the same way across all generations, but I think any experienced manager today recognizes that today's generations have different expectations regarding their jobs. Lightner's article is the first of two parts and discusses these issues.

Also on the management side, **Francis "Bud" Melaragni, CPCU**, of Allegient Systems discusses the many benefits to carriers of switching to electronic billing for legal bills. As Melaragni points out, most defense law firms and all of the larger ones are already well familiar with e-billing and glad to make the change. Indeed, in many respects, the benefits to carriers of e-billing also apply to the law firms.

Next, we present a report of the HB Litigation teleconference focusing on the future of claims for data breaches. Many areas of Internet privacy raise the potential for lawsuits and insurance claims, and attorneys for policyholders are always alert for ways to expand potential insurance coverage. As courts struggle to define privacy rights in the Internet age, claims for coverage are likely to grow.

The Claims Interest Group proudly profiles our newest committee member, **Charles W. Stoll Jr., CPCU, AIC, RPA**, branch manager of GAB Robins North America Inc. in Westmont, Ill., a leading provider of risk and claims management services and solutions to the insurance and self-insurance marketplace. We put Charles to work right away by asking him to share his CPCU Experience with his fellow interest group members.

The Claims Interest Group is known for its high-quality seminars, workshops and webinars. For example, the webinars we sponsored in 2009 focused on two current hot topics — the consequences of reserving rights and e-discovery. In the final article of this issue, Claims Interest Group member **L. Jane Densch, CPCU, AIC, ARe, ARP, AIS, CPIW**, summarizes both webinars and gives a preview of what you may find on the claims webinar schedule next year. ■

Notice of Loss Requirements — Changes In New York's Insurance Law — A Statutory Solution

by Robert A. Fitch, J.D., and David P. Turchi, J.D.



Robert A. Fitch, J.D., a resident partner in Rawle & Henderson LLP's New York office, concentrates his practice in the areas of general casualty, product liability, professional and medical malpractice, and commercial motor vehicle litigation. He is admitted to practice in the state and federal courts of New York as well as the U.S. Court of Appeals for the Second Circuit. Fitch has been rated AV by Martindale-Hubbell.



David P. Turchi, J.D., an associate in Rawle & Henderson LLP's New York office, received his law degree, cum laude, from the Washington College of Law at American University in 2000. He earned a bachelor's degree in international affairs from The George Washington University in 1996. He is admitted to practice in the state of New York and the U.S. District Courts for the Eastern and Southern Districts of New York.

Editor's Overview

Insurance policies routinely contain one or more provisions requiring the insured to give the insurer prompt notice of any loss. The notice provision in the standard CGL reads:

Section IV — Commercial General Liability Conditions

2. Duties In The Event of Occurrence, Offense, Claim or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

Although such provisions seem clear on their face, as readers are well aware, denial of coverage based on failure to give notice is a frequently litigated issue. Jurisdictions vary widely in how violations of notice provisions are treated. What has been characterized as the "traditional approach" treats proper notice as a condition precedent to coverage and allows the insurance carrier to deny coverage regardless of prejudice. See, e.g., *Webb v. Zurich Ins. Co.*, 200 F.3d 759 (11th Cir. 2000) (Alabama law). New York has been the leading jurisdiction following this approach. More recently, the majority view has been that late notice does not relieve the insurer of its obligations unless the delay prejudices the insurer. See, e.g., *Alcezar v. Hayes*, 982 S.W.2d 845 (Tenn. 1998).

Notice provisions also raise additional issues, such as what constitutes prejudice, what is a valid excuse for late notice, who has the burden of proof as to prejudice and even what constitutes "prompt" notice.

Issues regarding notice provisions are typically governed by case law, but in an effort to address some of these issues, New York has recently adopted a legislative solution that may create more questions than answers.

Editor's note: This article first appeared in *Rawle's Reports*, Volume 13, Number 7, a publication of Rawle & Henderson LLP © 2009. It is reprinted with permission.

Insurers are no doubt aware of the broad protections afforded them in New York, which permit insurers to disclaim coverage on the grounds that the insured failed to give timely notice of the claim. On Jan. 17, 2009, significant changes went into effect in New York's Insurance Law that will effectively remove some of these protections and will have a major impact on insurers' ability to disclaim untimely claims.

By way of background, under the common law in New York, failure of an insured to place its insurance carrier on notice of a potential claim in a timely manner, as defined by its insurance policy, entitles the insurer to disclaim coverage, irrespective of whether the insurer suffers prejudice by the insured's delay in giving notice. See *Briggs Avenue LLC v. Insurance Corp. of Hanover*, 11 N.Y.3d 377, 870 N.Y.S.2d 841 (2008), *1700 Broadway Co. v. Greater New York Mutual Ins. Co.*, 54 A.D.3d 593, 863 N.Y.S.2d 434 (1st Dep't 2008). This rule was based on the recognition that an insurer, "which has a duty to indemnify and defend, requires timely notice of

lawsuit in order to be able to take an active, early role in the litigation process and in any settlement discussions and to set adequate reserves." *Argo Corp. v. Greater New York Mut. Ins. Co.*, 4 N.Y.3d 332, 794 N.Y.S.2d 704 (2005). See also *Security Mut. Ins. Co. of New York v. Acker-Fitzsimons Corp.*, 31 N.Y.2d 436, 340 N.Y.S.2d 902 (1972).



This is no longer the case for insurance policies issued on or after Jan. 17, 2009, because of Chapter 388 of New York Law 2008, which amends section 3420 of New York's Insurance Law. Under the amended terms of the statute, insurers can no longer issue liability policies permitting them to disclaim coverage based on untimely notice unless the delay in providing notice causes prejudice to the insurer. In fact, as long as the insured puts the carrier on notice of the claim within two years of the time required by the policy, the insurer must prove that the delay caused prejudice if it wishes to disclaim coverage for failure to provide timely notice. Only if the insured waits more than two years from the time the policy requires notice, does the burden of proof shift to the insured or the injured person. But even with over a two-year delay, the insured can still defeat a carrier's attempt to disclaim coverage by demonstrating lack of prejudice. As such, Chapter 388 will have significant consequences for insurance coverage litigation.

Issue #1 — Defining Prejudice

Much of current coverage litigation revolves around whether the insured had sufficient notice of claim in order to trigger its duty to place the carrier on notice. Thanks to Chapter 388, the determination of when notice should have been given will become less important because the insured now has two years in which to give notice. Instead, coverage disputes will revolve around what constitutes "prejudice." The amended statute only provides a partial answer to this question. The amended section 3420(c)(2)(A) of the New York Insurance Law sets forth that prejudice occurs only when the failure to provide timely notice "materially impairs the ability of the insurer to investigate or defend the claim." This is troublesome because it does not explain if "material impairment" includes assigning new counsel, performing investigation, determining whether to provide coverage, etc.

The statute gives only one other clue as to what constitutes "prejudice": "[A]n irrebuttable presumption of prejudice shall apply if, prior to notice, the insured's liability has been determined by a court of competent jurisdiction or by binding arbitration; or if the insured has resolved the claim or suit by settlement or other compromise." This would appear to mean that a question of fact arises whenever an insurer claims prejudice short of a final determination. Thus, it is unclear when insurers can validly claim prejudice where no decision or finding on the merits of the action has been made as of the time they were given notice of the claim. This will no doubt lead to extensive litigation in the future.

Issue #2 — Covered Policies

It is important that Chapter 388 only applies to liability policies issued on or after Jan. 17, 2009. Chapter 388 did not amend policies already in effect as of

Jan. 17, 2009. As such, Chapter 388 will not be triggered in many litigations in the coming months and years. This is not to say that plaintiffs and insureds will not try to extend the language of Chapter 388 to policies that went into effect prior to Jan. 17, 2009. We anticipate this issue will also be the subject of significant coverage litigation.

Accordingly, adjusters should not assume that they cannot disclaim for failure to give timely notice without first checking the date the policy at issue went into effect.

Some Additional Issues

The amended law also requires that insurance carriers provide policy information to potential claimants upon request in some cases. Specifically, persons claiming against Personal Lines Auto, Homeowners and Commercial Auto policies can request the Bodily Injury policy limits, and the carrier must confirm or deny the existence of a policy within 60 days of receipt of the inquiry or send a request for additional information within 45 days of receipt of inquiry.

Moreover, in matters involving death or personal injury, a claimant may bring an action directly against a carrier that disclaims on the basis for failure to provide timely notice. Alternatively, the insured or the insurance carrier may initiate a declaratory judgment action to declare the rights of the parties under the policy and name the claimant as a party to the action. If filed within 60 days of the disclaimer, the claimant can no longer bring suit directly against the insurer for disclaimer on the basis of late notice.

While Chapter 388 seeks to resolve the late notice problem, it raises issues as to what constitutes prejudice to an insurer that disclaims on the grounds of late notice. ■

Understanding Generations

by Stacie Lightner

Stacie Lightner is an employee trainer with Learning Solutions at FBL Financial Group in West Des Moines, Iowa. Lightner develops and facilitates hard and soft business skills courses for FBL Financial Group employees. One of her courses is a popular new series on generations in the workplace. She earned a bachelor's degree in education from Iowa State University. She is currently pursuing a Masters of Science in Adult Learning and Organizational Performance from Drake University.

Editor's note: A future follow-up article will include different real-life scenarios that we face on the job in the insurance industry.

The topic of generations has increased since the first groups of baby boomers turned 62 last year and are now eligible to claim Social Security benefits. They are currently the largest working generation, and with their large population and impending mass exodus, companies are facing many issues, such as filling positions, retaining knowledge and finding ways to keep those individuals from retiring.

The baby boomer generation isn't the only generation in the news. The newest generation, the Millennials, are also a topic of conversation. They are changing the way managers manage and the way companies do business. Their expectations are very different from previous generations, so companies are trying to find out what makes them tick.

Baby boomer and Millennial generations are not the only generations with differing viewpoints and values. There are four generations — living cubicle-to-cubicle, office-to-office, sharing the same workspace — currently in the workplace. All four experienced different events during their formative years; therefore, their view of life, work and relationships differ.

In the workplace today, skills and abilities no longer correlate to age or experience. Respecting others' thoughts and contributions is more critical than ever. Understanding the perspective of others has always been important for teamwork to occur. In today's multigenerational workplace, your organization's success might depend on understanding all four generations.

In order to understand how individuals from different generations act and react, you need to understand yourself and the generation you represent. Demographers, or generation researchers, pull statistics from different timeframes that offer different demographics — not to mention naming the generations differently. The term variation and/or years are not important enough to impact the big picture of a generation's description.

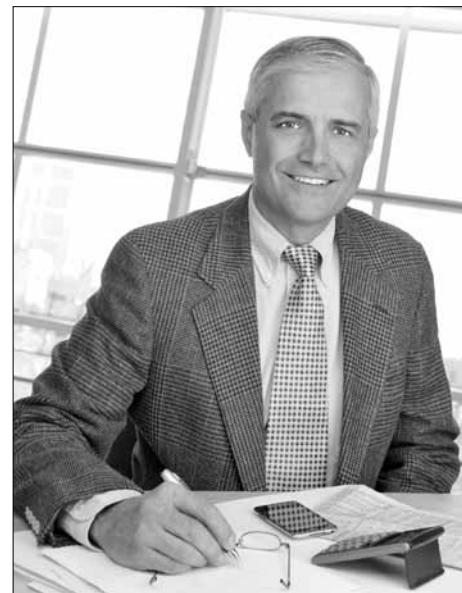
The topic of generations is subjective and not scientific or precise. The first thing to consider is the individual and his or her underlying values, or personal and lifestyle characteristics, which seem to correspond with each generation.

Birth Cohort (Generations)

People in your same age range are considered birth cohorts. Shared memories and experiences create a bond between members of each generation. Some categories of experience are things generations might have in common, including fashion, music, historical events, media experiences, products, technology and political events. Recalling the same television shows, cars or hairstyles creates a bond/connection. The experiences of individuals between the ages of one year to 20 years influence their values and beliefs. These are considered impressionable or formative years. Ultimately, the characteristics are general patterns in the relationships between and among family members, friends and people in the workplace. The personality type of each generation is a mixture of all of its members, molded by a shared set of experiences in their youth,

and reflecting a world view of the group as a whole.

Let's break down each generation and dig a little further into who they might be and why.



Traditionalists — Born 1922 to 1946 (49 million)

This generation has many affiliated names, such as World War II Generation, Silent Generation, Veterans, Greatest Generation, G.I. Generation or Traditionalists. For the sake of discussion, we'll call them Traditionalists. They have worked longer than any of the other generations. Experiencing WWII and the Great Depression taught this generation how to live modestly. They are hard-working, loyal, conservative and faithful to institutions. Many are approaching retirement or are retired and now working part-time jobs.

This generation started working when managers did the thinking and employees did the work. Employees moved through the company one step at a time, putting in many years to advance. Knowledge had to be learned and earned in order for individuals to hold **big** positions. Employers expected absolute loyalty, and rewards went to team players and hard workers. Traditionalists are excellent mentors to younger generations because

of their helpfulness, consensus-building and listening skills.

Younger generations should have opportunities to tap into older generations' experiences. Experience is tough to capture, and what can be gained by this transfer of knowledge by mentoring is priceless. The wealth of knowledge older workers have acquired will help the next generations immensely. It will jump-start careers and help the next generation of workers succeed more quickly, in turn helping the company succeed.



Baby Boomers — Born 1946 to 1960 (76 million)

When the baby boomers entered the Traditionalist workforce, they had to conform to the Traditionalist work paradigm. Slowly, they challenged the system, and they are responsible for many of the rights and opportunities that exist in today's workplace. They are optimistic and helped lead the fight for change. They also had to fight their way up the succession ladder created by previous generations.

This large generation is competitive and assertive because it faced competition from its members for jobs. Baby boomers tend to be workaholics because they believe if they demonstrate a hard work ethic and loyalty to their company, they

can get ahead. They are the generation that invented the 60-hour workweek and define themselves through work, making personal relationships with coworkers important. They are good team-builders and tend to schedule a meeting for anything because they need buy-in and consensus from others. Baby boomers want everyone to get along and be happy.

Baby boomers born in the first 10 years of the generation (Leading-Edge) will have values similar to those of the Traditionalists, and those born in the second half (Late Boomers) will have values similar to Gen Xers.

Gen Xers — Born 1960 to 1980 (50 million)

This generation also has many names affiliated to it: Baby Busters, 13th Generation, Generation I (for invisible), Generation L (for lost), or Slackers. We'll use novelist [Douglas Coupland](#)'s label, Generation X or Gen Xers. They are technically savvy, having entered the video game and personal computer era during their formative years. Gen Xers also experienced large parental divorce rates, parents being laid off after years of dedicated service, presidential issues and organized religion scandals. All these events produced a sense of skepticism and distrust of institutions. They don't expect their company to be loyal to them, so they see no problem changing jobs to advance professionally.

Gen Xers believe that work isn't the most important thing in their lives, unlike the baby boomers. They are resourceful and hardworking, but once the end of the day comes, they are out the door keeping their priorities straight.

They are the smallest of the four generations, although they have made an impact in the workplace. Many Gen Xers were latch-key kids and spent time alone, which made them independent, problem-solvers and efficient. They process information and solve problems very quickly. They tend to question the reason for many systems, practices and processes,

and they might find new or more efficient ways to get things done. They speak their minds, so listen to them because they may be saying the things that others are not.



Millennials — Born 1980 to 2000 (72 Million)

Several names have followed this generation, too: Generation Y, Internet Generation, Nintendo Generation, Echo Boomers, Millennials or Generation 2001. The Millennials, referencing their time in our society, are the most-supervised generation ever, growing up as overscheduled kids with an excess of adult-led activities to fill their time. The defining event for this generation was Sept. 11, so they have a strong sense of nation, patriotism and concern for the environment. They are also actively involved in community service and want to pursue occupations that make a difference.

Millennials are close in number to the baby boomer generation, and they might find themselves forced to compete and work extra hours to get ahead, even though they share the Gen Xer idea of work-family balance. This generation is

Continued on page 8

Understanding Generations

Continued from page 7



less likely to change jobs like Gen Xers and more likely to make entire career changes or build parallel careers. Many in this generation are still in high school, but the oldest are recent college graduates and entering the work force. These individuals had access to cell phones, pagers and personal computers all their lives. They want all the best, up-to-date technology to keep them motivated and connected to their work. If technology is manual or antiquated, they might find it boring and ask why it can't be done in a simpler and quicker manner.

'Cuspers' — Wedged between Two Generations

If your birthday lands near or right on a generation line, you would be considered a "Cusper" or "Tweener." Remember, the birth years defining the generations aren't carved in stone. Even demographers use different time frames when doing

their research. When looking into each generation, you might identify with more than one generation if your birth year falls near the beginning or the end of a given range of years.

Managing Generations

The workplace has changed, and managers need to keep up to speed when it comes to adjusting their management style for different generations.

Managing Gen Xers is simple — give them a task with details and a deadline and let them loose. They are independent workers who prefer to be self-directed. Millennials prefer to work in groups or independently. They do need to know why they are doing what they are doing. Give them the **big picture** and how they fit into it. They also don't want to be micromanaged, although they need consistent positive feedback so they know

they are on the right track. Remember, they were brought up by "helicopter parents" — constant hovering. They were managed and shuttled from place to place and encouraged along the way. They also had parents stick up for them, protecting them every step of the way. Their over-achieving ways make them frustrated when they make mistakes. Don't forget that this generation is labeled with the "No Child Left Behind" stigma.

A lot of diversity exists among people and generations. Even when generations are shaped by common experiences of their time, expect differences between those who grew up rich or poor; small town or city; coast or Midwest, and many other experiences, including birth order.

Ultimately, understanding what drives other generations is the first step toward connecting the generational divide in the workplace. When you understand that differences in values are just that, it doesn't make it good or bad. We grew up in different worlds. After bringing all of this knowledge together, it still comes down to all generations/people wanting the same thing — to feel respected and valued. ■

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Effective Management of Claim Legal Costs

Includes E-Invoicing

by Francis "Bud" Melaragni, CPCU



Francis "Bud" Melaragni, CPCU, has been with Allegient Systems since 2004. He is the director of client services at Allegient Systems, a leading legal e-billing company based in Wilton, Conn. Prior to joining Allegient, he spent several years as a claims professional with a major property-casualty company in the Boston, Mass., area, where he successfully implemented software and vendor management solutions.

Level spending is one of the top three costs incurred by most property-casualty claim operations. Yet, for many, the lack of a systematic and comprehensive management approach creates the likelihood that significant claim leakage occurs. With a relatively small amount of effort, claim organizations can gain better control of, and reduce, claim leakage. Tested and proven methods are already available and are successfully being put into use by more and more property-casualty companies.

Many property-casualty claim operations employ highly sophisticated approaches to understand and manage indemnity (loss) payments and medical costs. Given these are typically the two largest costs incurred, motivation is high to employ a strong and systematic management approach for these cost elements in the highly competitive property-casualty markets. So, if the opportunity for significant improvement can be made in understanding and managing claim legal cost, why wouldn't a claim operation take a closer look?

Based on statutory and generally accepted accounting methods (GAAP) data provided by property-casualty companies and reported in the public domain, legal costs consume five to 10 percent of each premium dollar for most property-casualty entities. In certain segments, such as

medical malpractice, product liability, commercial multiperil, and other professional liability areas, the consumption of premium dollars by legal expense is often north

of 10 percent. Though data is not as readily available, there is a belief by some that the nonstandard property-casualty market, including guaranty funds, captives, state-run insurers, self insureds and public pools, tend to have an even higher level of claim legal costs.

While legal fees may be third in the pecking order of claim costs, they still represent a hefty cost that can often be improved on relatively easily and quickly. Further, given the increasingly competitive market in which property-casualty companies operate, it's essential to target areas that offer large opportunity for improvement. There are a number of steps that have proven beneficial in achieving better results for claim legal cost, including:

- Establishing professional legal billing guidelines.
- Having a planned and consistent legal bill review workflow.
- Utilizing personnel skilled in legal bill review.
- Taking advantage of software to systematically review, capture and report data.

However, having most of these practices in place without the solid foundation of electronic invoices will likely leave a significant shortcoming in the management and understanding of claim legal costs — and almost certainly result in continued claim leakage in both legal and indemnity spending.

This is true because a paper-based invoice process is messy, costly, error-prone and inefficient in almost all areas. In addition, when it comes to an area as complex and costly as claim legal spending, the paper-based process creates an environment that makes it difficult for management to have the visibility and understanding needed

Continued on page 10

Effective Management of Claim Legal Costs Includes E-Invoicing

Continued from page 9

to effectively manage the costs and performance of the law firms they rely on.

One should expect that when submitted on paper, claim legal invoices are not consistently and thoroughly examined, which in turn raises questions about internal controls and cost leakage. In addition, with paper invoices it's very difficult, if not impossible, to consistently and quickly capture key data, such as overall case cost, cycle time and staffing across firms, that will allow the assessment of the performance and results that are being delivered — and that are needed to be competitive.

The fact is that the vast majority of law firms are already accustomed to providing invoices electronically to one or more of their client companies in the property-casualty industry. With today's proven technologies, the rapid adoption of the Internet as a quick and efficient communications medium, and e-everything becoming the norm rather than the exception for business, there is no better time than the present to move to electronic submission for all claim legal invoices.

Making the case for e-invoicing should not be difficult:

- **It's Easy.**

Implementation of e-invoicing with law firms can be accomplished in days, requiring no need for IT resources or any installation of technology or software. Most e-billing companies do not require an upfront investment or time commitment. The majority of law firms already use one or more e-invoicing solutions. Those law firms who are not current users can typically be trained in a one- to two-hour Web-based session.

- **It's Tested and Proven.**

Law firms have been submitting electronic invoices to property-casualty entities for over a decade, resulting in proven, time-tested, and reliable software and processes. Further, a large and growing number of property-casualty companies now



require e-invoicing from their external law firms.

- **It's More Secure.**

The encryption technology used during the submission of e-invoices is more secure than even the best paper-delivery method.

- **It Offers a Better Process.**

Electronic invoices have several advantages over paper invoices, including:

- ◆ Speed — real time versus postal time.
- ◆ Security — encryption, time-dating and storage in a secure e-location.
- ◆ Efficiency — allows for instantaneous delivery and timely review.
- ◆ Tracking and retrieval — invoices and status can easily be found and tracked by both the insurers and law firms, eliminating needless and time-consuming calls or file searches.
- ◆ Improved internal controls — not only can e-invoices be retrieved quickly and easily, every movement and change is tracked and permanently stored.

- **It Reduces Billing Errors.**

Some e-invoicing systems offer a sophisticated rules engine that automatically reviews invoices for math, rate and basic guideline

violations, such as copying rate or travel limits.

- **It Enhances Communication and Reduces Turnaround Time.**

E-invoices and subsequent discussions and appeals are managed in real time and via the Internet.

- **It Enables Robust Management Reporting.**

With the better e-invoicing solutions, a database will be created to enable a robust set of reporting options, providing a better understanding of legal costs and more effective evaluation and management of law firm performance.

- **It's Better for the Environment.**

In our environmentally conscious society, the elimination of paper invoices from law firms will have a small but positive impact.

If a claim operation is still allowing its law firms to send paper invoices, then it might be a good time to make a change. The verdict has been rendered and the benefits are clear. E-invoicing has been embraced by many property-casualty claim departments and is used regularly by the vast majority of law firms. Those property-casualty claim operations that have not yet moved forward have a great opportunity awaiting. ■

Tomorrow's Coverage Disputes over Data Breaches — A Deluge or a Dud?

by Tom Hagy

Tom Hagy is president of HB Litigation Conferences LLC, a nationally accredited provider of continuing legal education for insurance attorneys, insurance companies and policyholders. He is former publisher of Mealey Publications and a former vice president of LexisNexis.

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With hundreds of laws governing data privacy and the potential for billions of dollars in damages, you can't help but think that insurance coverage disputes are about to fall on courts like confetti.

Maybe yes; maybe no.

Either way, companies need to pay as close attention to their insurance policies as they do their data protection policies.

Speaking on HB's July 15 teleconference — "Private Data Breaches: Insurance Coverage Implications & Prevention" — policyholder counsel **Scott Godes, J.D.**, of Dickstein Shapiro told listeners that, despite what insurance counsel might say, "Don't write off your existing coverage"

if looking for protection. He also said to know the window of time to get your notice in quickly to get your insurer "to partner up with you" and to consider new cyber-security coverage — but "know its limitations."

Godes said that according to one report, data breaches in 2008 compromised 285 million records. And there has been a "massive proliferation" of state laws in addition to federal privacy laws, he continued. There are now laws in 44 states, plus Washington, DC, Puerto Rico and the Virgin Islands, Godes reported. Co-presenter **Arturo Perez-Reyes** said California alone has 81 separate privacy laws, and there are hundreds of laws outside the U.S. If you lose records, you will have to tell everyone that you lost them, he said, "essentially notifying a whole class of potential plaintiffs."

There was a 44 percent increase in data losses last year that resulted in \$50B in losses, Perez-Reyes reported, adding that nine million people were affected by identification theft.

"The concept of a firewall is a joke," Perez-Reyes declared.

As businesses have more information and data, there will be more people interested in getting access to it, Godes said, adding that paper-based data are vulnerable, too.

Godes cited the well-known case involving TJX Companies, which paid a \$200M settlement for a massive data theft of customer credit card information. They recently had to pay nearly \$10M more for the cost of resolving underlying claims. "If you're a company faced with that situation, what would your insurer say if you asked them to defend you?"

In examining traditional liability policies' coverage of property damage, Godes said courts are split on whether computer data are property. He maintains that data are property, albeit of the microscopic variety stored in the form of tiny metal particles.

The most notable case against this argument, Godes said, is *Eyeblaster, Inc. v. Fed. Ins. Co.*, 2008 U.S. Dist. LEXIS 81912 (D. Minn. Oct. 7, 2008), where the court rejected the idea, based on new ISO language, that electronic data are tangible property.

Godes cautioned, though, that under many states' laws there may be a duty to defend — in itself a costly proposition — even if just one claim in an entire complaint is potentially covered.

He urged policyholders to look to policy endorsements for language that might reverse standard form language regarding data. He said crime policies should be examined for coverage of computer fraud or theft. And don't forget business interruption or consequential business interruption coverage, he said, for situations in which a third party has a breach that is essential to keep your business running.

As far as notifying carriers, Godes said time is not on your side: Policyholders



Continued on page 12

Tomorrow's Coverage Disputes over Data Breaches — A Deluge or a Dud?

Continued from page 11

should not hesitate to bring carriers into the loop when claims arise.

Godes criticized insurance company arguments against coverage for data theft arising from failures on the part of the policyholder's systems. "If there is no failure to maintain proper authentication and no failure of data security measures, there would be no potential liability and no lawsuits," he said. "And if there never was a failure of proper authentication and never was a failure of data security, I suppose insurance companies would be thrilled because they would get your insurance premiums and nothing ever goes wrong."

Co-presenter **Timothy Delahunt, J.D.**, of Kenney, Shelton, Liptak & Nowak called this a "classic policyholder complaint — that insurance companies issue coverage then deny it."

"The analogue is that courts will find coverage when they need to, to satisfy an underlying liability. Do I think the facts and policy language have changed?" Delahunt asked. "By and large no. Could the coverage landscape change as underlying liability expands? I believe that's possible."

Put Down Your Hats and Hooters

Delahunt was quick to tell coverage lawyers not to get too excited at the potential for new business. "If we are waiting for an onslaught of cyber-data-breach coverage litigation, we may be disappointed," he said. "These types of liabilities are going to be covered or not covered in the future based largely on specialty insurance products, rather than the basic coverage forms. And if that's true, and if they are underwritten carefully, and if they are narrowly written to cover specific exposures, then it's at least possible that the litigation would not be widespread from the coverage perspective, but [instead] will happen in pockets."



Barring a fundamental change in the way ISO issues its basic liability products and the way companies follow suit, Delahunt doesn't see much litigation on the horizon. He said there just isn't anything "novel from a coverage law perspective" here.

However, he said, "If these data breaches become more frequent, which they are, then the impact will be that there is going to be an increase in the underlying litigation ... that would signal a broadening of the underlying liability."

"If corporations and even other entities ... are subject to wider third-party liability," he went on, "then what I would suggest is that courts applying insurance products in their 'institutional subconscience' are going to expand coverage under standard products under specialty products to at least keep some pace with the scope of the underlying liability."

Of the 2001 ISO revision to the definition of property damage that takes out electronic and digital data, Delahunt called it "a well-crafted amendment to the definition." "But unless your claimant is claiming that the damage of a data breach is to their own software or their own data, rather than their money interest, bodily interest, commercial

interest, then this doesn't really do much for a carrier as far as a carrier extricating themselves from claims."

Perez-Reyes, who is with Saylor & Hill Company, a Barney & Barney Company, in Oakland, Calif., claims insurance policies are all about "tangible goods dealing in a world of atoms." Are data tangible? "Not at all," he said. "We're talking about bits. There is no cost to a 'one' and a 'zero.'"

Perez-Reyes said the biggest cost to companies comes when credit monitoring is required. He said in one case there were 45 million people whose records were allegedly compromised. The cost of credit monitoring is \$35 per person, per year. In that case, one year's worth of monitoring would cost \$1.44B.

The other key costs, which also are not usually covered by insurance, are the forensic costs to identify what has been lost and the cost of crisis management to repair damage to a company's brand and stock values.

In the end, whether covered or not covered, Godes probably summed it up best. "This is not a problem that is going to fade away." ■

Claims Interest Group Committee Welcomes New Member

by Keithley D. Mulvihill, CPCU, J.D.

The Claims Interest Group Committee welcomes its newest member, **Charles W. Stoll Jr., CPCU, AIC, RPA**. He is branch manager of GAB Robins North America Inc., a leading provider of risk and claims management services and solutions to the insurance and self-insurance marketplace.

We asked Charles to write about his personal CPCU experience, which follows:

“My career in the insurance industry began in 1975 when I started working as a claims adjuster. Since then, I have held many positions in claims and risk management. I have even worked on the brokerage side of the business for six years. I came to my present employer, GAB Robins, in October 2007. I am currently a branch manager for the state of Illinois. GAB Robins is the second-largest independent adjusting provider in the world.

“I started working on my CPCU designation in 1978. I passed CPCU 9 — Economics, but then I failed to pass CPCU 1 — Probability. I actually failed it twice, got discouraged and quit the program. My first wife got sick, and I had to take care of her. I had my fair share of setbacks also. I finally decided to get back into the program in 1986. I took the General Insurance courses and earned my Associate in Claims (AIC) designation in 1987. I re-married, and my new wife encouraged me to continue toward my CPCU designation because I had three of the 10 parts completed. I finally earned my designation in 1991, 13 years after I started. I always tell people just starting out in the program to not get discouraged. Persistence does pay off; you just have to continue to work hard.

“Earning the CPCU designation shows your insurance peers that you are willing to put yourself in an elite category. I feel it is the most prestigious designation



**Charles W. Stoll Jr.,
CPCU, AIC, RPA**

ideas and suggestions that I feel can help the committee. Being a member of the Claims Interest Group is important to me because I don’t want to stand on the sidelines. I have earned my designation, and I want to put it to work to help others.

“I currently reside in one of the northwest suburbs of Chicago with my wife, Diana, and my two children, Charles and Andrea. I enjoy relaxing on the weekends at home. I try to play golf, watch some sports on TV, exercise, and chase my two dogs around the house. I also enjoy working around the house.” ■

in the insurance industry. I am proud to be a CPCU, and I work hard to maintain the high standards that the CPCU Society expects of its members. I encourage those individuals just starting out in the program to continue to work toward earning the designation because of the lofty ideals of the CPCU Society. Becoming a CPCU has opened doors for me, allowed me to accept challenging positions, and given me the opportunity to work in an industry that is constantly changing and evolving.

“I am the current president-elect of my chapter, the Chicago-Northwest Suburban Chapter. I worked my way up through the various chapter board positions, and hopefully, I will be the chapter president for the 2010–2011 year. The board members of the chapter are all dedicated individuals who work for the benefit of the chapter membership. They are terrific people who give of themselves and their time to the chapter and the various events sponsored by the chapter. I feel very privileged to be a part of this group of outstanding insurance professionals.

“My reason for joining the Claims Interest Group Committee is that I want to give back to the CPCU Society. I have

Claims Interest Group Webinars — 2009 and Beyond

by L. Jane Densch, CPCU, AIC, AIS, ARe, ARP, CPIW



L. Jane Densch, CPCU, AIC, AIS, ARe, ARP, CPIW, is a claims auto/general liability products director with Fireman's Fund Insurance Company, a Company of Allianz. She leads the A/GL technical directors in a cohesive approach to technical issues, for not only the claims staff but also business partners. Densch is a member of the CPCU Society Claims Interest Group. She is active in the CPCU Society's Colorado Chapter, the Colorado Insurance Education Foundation and the Insurance Women of Denver, an association of NAIW (International).

Geared toward busy insurance professionals who are looking to advance their careers, CPCU Society webinars offer cost-effective educational opportunities with no downtime or travel expense.

The Claims Interest Group sponsored two webinars in 2009:

- “Legal and Economic Consequences of Reserving Rights” was presented in February by **Bethany K. Culp, J.D.** Culp is a partner with Hinshaw and Culbertson LLC, where she leads the firm’s coverage practices. She has specialized in coverage litigation for the bulk of her legal career.

Relative to an insurer’s duty to defend, this webinar helped attendees distinguish between the right to independent counsel and the right to independently select counsel. The discussion included the consequences of reserving rights and the position of all the states on right to independently select counsel. Attendees rated this presentation a 4 out of 5.

- “Risk Management and Ethical Considerations Involving E-Discovery” was presented in September by **Steven M. Puiszis, J.D.**, and **Thomas L. Browne, J.D.**, both partners with Hinshaw and Culbertson LLC in Chicago. Puiszis is a member of its business litigation practice group and electronic discovery committee. He established Hinshaw’s Practical E-Discovery blog and serves as its editor-in-chief; he has written a number of articles on litigation-related issues and other topics. Browne is in-house counsel and chair of the firm’s Legal Ethics Committee, Conflict of Interest Committee and Quality Assurance Committee.

Somewhere between 93 percent to 97 percent of all information is created electronically. The costs to perform electronic discovery are astronomical. This discussion included various discovery rules with tips on

meeting with clients and what types of documents need to be shared. Attendees rated this presentation a 4 out of 5.

Members of the Claims Interest Group who coordinated these presentations are **James W. Beckley, CPCU, ARe, AIC**, account executive/associate claim manager, American Agricultural Insurance Company; **Cecelia Foy-Dorsett, CPCU**, claims manager, Senn Dunn Insurance; and **L. Jane Densch, CPCU, AIC, ARe, ARP, AIS, CPIW**, claims auto/general liability product director with Fireman’s Fund Insurance Company.

We welcome any ideas for future topics. Topics currently under consideration for 2010 include:

- Accident reconstruction, a joint webinar with the Loss Control Interest Group.
- Appropriate claims documentation — not the way you say it, but how you say it.
- Elements of premises security claim and proper investigation.
- Methodology for defending traumatic brain injury claims. ■



2009–2010 Claims Interest Group Committee

Chair

Tony D. Nix, CPCU, CIFI

State Farm
Decatur, Ga.
E-mail: tony.d.nix.aqf9@statefarm.com

Webmaster**Arthur F. Beckman, CPCU, CLU, ChFC, AIM**

State Farm
Bloomington, Ill.
E-mail: art.beckman.bltw@statefarm.com

Newsletter Editor**Keithley D. Mulvihill, CPCU, J.D.**

Rawle & Henderson LLP
Pittsburgh, Pa.
E-mail: kmulvihill@rawle.com

James W. Beckley, CPCU, AIC, AIM

American Agricultural Insurance Company
Schaumburg, Ill.
E-mail: jbeckley@aaic.com

L. Jane Densch, CPCU, AIC, ARe, ARP, AIS, CPIW

Fireman's Fund Insurance Companies
Denver, Colo.
E-mail: jdensch@ffic.com

Maureen P. Farran, CPCU, AIC, ARM

Crawford and Company
Portland, Ore.
E-mail: maureen.farran@choosebroadspire.com

Cecelia T. Foy-Dorsett, CPCU, AIC

Senn Dunn Agency
Greensboro, N.C.
E-mail: cfoydorsett@senndunn.com

John A. Giknis, CPCU

ISO
Jersey City, N.J.
E-mail: jgiknis@iso.com

Karen Hope, CPCU

State Farm
Baton Rouge, La.
E-mail: karen.hope.a792@statefarm.com

Barbara J. Keefer, CPCU, J.D.

MacCorkle, Lavender & Sweeney, PLLC
Charleston, W.Va.
E-mail: bkeefer@mlclaw.com

Barbara Wolf Levine, CPCU, J.D.

E & I Holdings, LLC
Boca Raton, Fla.
E-mail: blevine@ecnime.com

William D. McCullough, CPCU, CLU, ChFC, AIC, AIM

State Farm
Bloomington, Ill.
E-mail: william.mccullough.aops@statefarm.com

Robert Riccobono, CPCU

Rockville Risk Management Associates
Rockville Centre, N.Y.
E-mail: rriccobono@rockvrisk.com

Ray A. Rose, CPCU, AIC

Hastings Mutual Insurance Company
Hastings, Mich.
E-mail: rrose@hastingsmutual.com

Eric J. Sieber, CPCU, AIC

Sieber Claims Investigation
Alta Loma, Calif. 91701
E-mail: ejsieberco@aol.com

Robert D. Stevens Sr., CPCU, CLU, AIC, ARM

Crawford and Company
Atlanta, Ga.
E-mail: robert_stevens@us.crawco.com

Charles W. Stoll, Jr., CPCU, AIC, RPA

GAB Robins N.A., Inc
Westmont, Ill.
E-mail: stollc@gabrobin.com

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

Hartford Financial Services
Hartford, Ct.
E-mail: marcia.sweeney@thehartford.com

Theresa L. Young, CPCU, AIC, API, AIM

Cal State Automobile Assn.
Colorado Springs, Colo.
E-mail: theresa_young@csaa.com

Andrew L. Zagrzejewski, CPCU

Farmers Insurance Group
Los Angeles, Calif.
E-mail: andrew_zagrzejewski@farmersinsurance.com

Liaisons**John J. Kelly, CPCU**

CPCU Society
Malvern, Pa.
Phone: (800) 932-CPCU, ext. 2773
E-mail: jkelly@cpcusociety.org

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

AICPCU
Malvern, Pa.
Phone: (610) 644-2100, ext. 7225
E-mail: popow@cpcuiia.org



Claims Interest Group

Volume 27 • Number 2 • December 2009

Claims Quorum

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

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Volunteer Leaders, Rising Stars to Gather in Phoenix

The CPCU Society's current and emerging leaders will focus on strategic issues affecting the Society and your chapter at the 2010 Leadership Summit. The conference will be held on April 29–May 1, 2010, at the Pointe Hilton Squaw Peak Resort in Phoenix, Ariz.

All volunteer leaders are urged to attend this distinguished gathering to chart the Society's future course and participate in a free-flowing exchange of ideas on vital topics.

The Summit will include:

- Board of Directors meeting.
- Committee, task force and interest group meetings.
- CPCU Society Center for Leadership courses. Open to all members.
- Chapter and interest group leader workshops.
- Leadership luncheons with special guest speakers.

Visit www.cpcusociety.org for a sneak preview.

The Claims Interest Group newsletter is published by the Claims Interest Group of the CPCU Society.

Claims Interest Group
<http://claims.cpcusociety.org>

Chair
Tony D. Nix, CPCU, CIFI
State Farm
E-mail: tony.d.nix.aqf9@statefarm.com

Editor
Keithley D. Mulvihill, CPCU, J.D.
Rawle & Henderson LLP
E-mail: kmulvihill@rawle.com

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

Director of Program Content and Interest Groups
John Kelly, CPCU

Editor
Stephen Young

Managing Editor
Mary Friedberg

Design/Production Manager
Joan A. Satchell

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