CPCU SOCIETY INSURING YOUR SUCCESS

Claims Interest Group

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Claims Quorum

Message from the Chair

by James W. Beckley, CPCU, AIC, ARe, AIM

James W. Beckley, CPCU, AIC, ARe, AIM, is senior vice president of claims for American Agricultural Insurance Company in Schaumburg, Illinois. Beckley began his insurance career in 1980 with North Carolina Farm Bureau Mutual Insurance Company. From 1992 to 2004, he served at Farm Bureau Mutual Insurance Company of Idaho as vice president of claims. His current duties at American Agricultural Insurance Company include serving Farm Bureau client companies on property and casualty reinsurance claims and acting as an account executive.

Have you ever wanted to tell a story relaying your point of view about insurance claims? Have you ever wanted to mix with insurance professionals from other companies in a noncompetitive environment? Have you ever wanted to experience a different leadership opportunity and a sense of satisfaction because you are part of something special that represents the insurance industry well?

My name is **Jim Beckley,** and I am pleased to have the opportunity to visit with you as the CPCU Society Claims Interest Group chair. If your answer to any of the above questions is yes, I would like to hear from you. In the Claims Interest Group, we are looking for volunteers with energy and ideas. I believe that you will enjoy the experience.

Best wishes and thanks to **Barbara Wolfe Levine, CPCU, JD,** past Claims Interest Group chair. Barbara's service to the Claims Interest Group has been selfless and outstanding. I appreciate her continued advice.

We look forward with much anticipation to the CPCU Society Annual Meeting and Seminars in our nation's capital on September 8–11, 2012. The Claims Interest Group will be sponsoring two events at the Annual Meeting:

- Claims Interest Group Luncheon: Sunday, September 9, 11:30 a.m.–1 p.m. **Dr. Edward R. Johnson,** National Weather Service (NWS) director, Office of Strategic Planning and Policy, will discuss lessons learned from past extraordinary storm activity and the NWS's current campaign of "Building a Weather-Ready Nation." This event is sponsored by Insurance Services Office, Inc. (ISO).
- Claims Interest Group Seminar: Sunday, September 9, 2:45–4:45 p.m. "Using Social Media Effectively to Investigate Insurance Claims—And How to Avoid Getting Trapped in Your Own Investigation!" (2 CE)

Be sure to register for the luncheon. I believe you will find the seminar on social media timely and informative.

While in Washington, D.C., the Claims Interest Group will continue preparing for the 2013 Annual Meeting in New Orleans. Interesting seminar ideas are already in development for our meeting in The Big Easy.

I hope to see you in Washington, D.C. If you aren't there, stay tuned to Claims Interest Group news and information through *Claims CQ* and other communications. ■

What's in This Issue

Editor's Notebook

by Donald O. Johnson, JD, LLM, CPCU

Donald O. Johnson, JD, LLM, CPCU, is the founder of D. O. Johnson Law Office, PC, in Philadelphia. He has more than fifteen years' experience in commercial litigation and counseling and has represented clients in state and federal courts. His practice has concentrated primarily on insurance coverage and bad-faith claims handling litigation involving commercial property and commercial liability policies. Don also serves as general counsel of the National African-American Insurance Association.

Among other articles, this issue includes an article that spotlights the members of the Claims Interest Group Committee. For those of you who do not know the committee members, the article serves as an informal introduction to the Claims Interest Group (CIG) members who are guiding the Society's largest interest group. The committee members' contact information is on the CIG section of the Society's website. Feel free to contact them if you'd like more information about the committee's activities or you are interested in volunteering to serve on the committee.

This issue also contains these interesting articles:

- **Robert A. Fitch's** and **David B. Sherman's** article, "New York: Random Drug Tests—Potential Liability," which discusses how a few simple, procedural clarifications and diligent reporting may help avoid unnecessary and costly liability in the event that a company terminates a commercial motor vehicle operator for failure or refusal of a random drug test
- **Kim V. Marrkand's** and **Alec J. Zadek's** article regarding a Massachusetts court decision concerning damages for an insurer's willful violation of an unfair settlement practices statute
- My article, "Write a Claims Article and Earn CPD Points," which encourages fellow CPCUs to earn Continuing Professional Development (CPD) points by writing an article for publication in the Claims Quorum
- **Brian N. Marx's** article, "Technical Writing: Don't Let It Be Your Nemesis," which suggests a method that can help ease the anxiety and break the psychological barriers you may have about writing a technical article
- Announcements about new tracks in the Associate in Claims (AIC) designation program and about the upcoming Annual Meeting in Washington, D.C.

We invite CIG members and nonmembers to submit claims-related articles for publication consideration. If you have an article that you would like to have published, or if you know someone else who would like to do so, please send the article to me at donjohnson@dojlaw.com. As always, our goal is to provide meaningful information to claims professionals. ■

New York: Random Drug Tests—Potential Liability

by Robert A. Fitch and David B. Sherman

Robert A. Fitch is a partner in Rawle & Henderson LLP's New York office. He concentrates his practice on commercial motor vehicle litigation, the defense of product liability claims, and professional and medical malpractice. 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. Bob has tried numerous cases to verdict in the state and federal courts of New York. He has been rated AV by Martindale-Hubbell.

David B. Sherman is an associate in Rawle & Henderson LLP's New York office. He concentrates his practice on commercial motor vehicle litigation and workers' compensation claims. In addition, David handles the defense of professional, dental and medical malpractice matters, including representation of architectural and engineering clients. He is admitted to practice in New York and the United States District Courts for the Southern and Eastern Districts of New York.

Editor's Note: This article originally appeared in the February 2012 issue of *Transportation Law Update* (vol. 13, no. 2), a Rawle & Henderson publication. It is reprinted with the permission of Rawle & Henderson.

Department of Transportation regulations deem random drug testing necessary to ensure that commercial motor vehicle operators perform their duties in the safest possible manner. However, the U.S. District Court for the Eastern District of New York (Brooklyn) recently issued a decision that clearly warns the trucking industry of potential liability arising from a company's failure to provide drivers with precise procedural instructions for random drug tests, and of the need to promptly inform United States Investigations Services (USIS) of any unfavorable test results. This article explains how a few simple, procedural clarifications and diligent reporting to USIS may help avoid unnecessary and costly liability in the event a company terminates a driver for failure or refusal of a random drug test.

Case Study

In New York, employees may sue their former employers for defamation when the former employer inaccurately informs potential employers that the employee refused or failed a drug test. In *Machel Liverpool v. Con-Way, Inc.*, the U.S. District Court for the Eastern District of New York allowed Machel Liverpool, a former driver, to bring a defamation suit against Con-Way, Inc. because Con-Way informed potential employers that Liverpool refused or failed a drug test. *Liverpool v. Con-Way, Inc.*, No. 08-CV-4076 (E.D.N.Y. Nov. 26, 2010). Liverpool reported for work at Con-Way around 7:50 a.m., at which time he received a packet of information instructing him to report for a random drug test. The drug test packet provided no information about the time he was supposed to report for testing, or whether the driver needed to return to work after he submitted to the test. As such, the driver left Con-Way and visited his girlfriend before reporting to the testing site.

Liverpool arrived at the testing center around 10 or 10:30 a.m., and did not return to work after he was administered the drug test. Shortly thereafter, Liverpool's supervisor questioned him about his whereabouts before and after the test. Rather than tell his supervisor that he visited his girlfriend, Liverpool claimed that he ate breakfast at a Wendy's restaurant before the test, and returned home afterwards. After Liverpool's supervisor learned that Wendy's did not serve breakfast, Liverpool was terminated for lying and poor attendance, as demonstrated by his failure to return after the drug test. Liverpool applied for several truck driver positions in the months that followed, but was repeatedly denied a job because Con-Way apparently informed each employer that Liverpool failed or refused a drug test. While it is unclear whether Liverpool passed the drug test, he undisputedly appeared at the testing center and was administered a drug test. As such, Con-Way erred in reporting that Liverpool had refused a drug test.

More than a year after Con-Way terminated Liverpool, he filed a lawsuit alleging that Con-Way's statements to potential employers about the failed or refused drug test were defamatory. In New York, the elements to establish defamation are "(1) a false statement; (2) publication without privilege or authorization to a third party, (3) by at least a negligence standard of fault and (4) the statement either causes special damages or constitutes defamation per se." *Dillon v. City of New York*, 261 A.D.2d 34, 38 (1st Dept. 1999). A claim for defamation begins accruing on the first day the defamatory statement is published, and is subject to a one-year statute of limitations under CPLR §215(3). However, the statute of

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limitations begins to run again from the date of any subsequent publication of the defamatory material.

The Court permitted Liverpool to bring suit more than a year after Con-Way first informed a potential employer of his failed or refused test because each instance in which Con-Way notified another potential employer of Liverpool's conduct constituted a re-publication of defamatory material, thus tolling the one-year statute of limitations. This is of particular interest to trucking companies informing a terminated driver's potential employers of a failed or refused drug test.

Lessons Learned from the Con-Way Case:

Provide Drivers With Clear Procedural Instructions Before They Report for a Random Drug Test; Immediately Report Any Unfavorable Results to USIS.

Liverpool serves as a clear warning to trucking companies—provide your drivers with clearly written procedural guidelines before they take random drug tests. Make sure your instructions state the precise time and location of the driver's test, and whether he or she must return to work afterwards.

If a trucking company erroneously informs a driver's potential employers of a failed or refused test, each subsequent communication tolls the statute of limitations for a defamation claim. In order to minimize the time in which plaintiff might file a suit for defamation, make sure to immediately notify USIS and/or other national databases of the former employee's failed or refused test. While not all trucking companies utilize USIS to examine their potential hires' prior employment records, many do. As such, reporting to national databases like USIS minimizes a company's need to interact with all potential employers who subscribe to USIS. This substantially reduces the potential for miscommunication between companies as to a driver's history. Most importantly, however, reporting to USIS allows the driver's former employer to inform other companies about the driver's history while invoking the New York single publication rule, which starts the clock on the one year statute of limitations for defamation claims. ■

The Supreme Judicial Court of Massachusetts Issues New Decision Clarifying the Measure of Damages for an Insurer's Willful or Knowing Violation of 93A, § 9

by Kim V. Marrkand and Alec J. Zadek

Kim V. Marrkand, J.D., is a member in the Litigation Section in Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.'s Boston office and chairs the firm's Insurance/Reinsurance Practice Group. Her special expertise is in representing and advising insurers and reinsurers on the business and legal implications of a variety of complex coverage issues. Ms. Marrkand's breadth of experience includes representing insurers with respect to coverage issues involving pollution, environmental, bad faith, tobacco, construction defect, product liability, directors and officers, bankruptcy, asbestos and emerging risks.

Alec J. Zadek, J.D., is an attorney in the Litigation Section in Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.'s Boston office where he practices in all areas of complex litigation, including insurance and reinsurance. He has experience working on a variety of complex coverage issues involving directors and officers, bad faith, and long-term progressive injuries.

On February 10, 2012, the Supreme Judicial Court of Massachusetts issued its much-anticipated decision, *Rhodes v. AIG Domestic Claims, Inc.*,[1] clarifying the scope of damages when an insurer is found to have willfully or knowingly committed an unfair settlement practice in violation of the Massachusetts Consumer Protection Act (G.L. c. 93A, § 9).

In awarding sanctions totaling $22 million, the Court determined that the measure of damages for an insurer's willful or knowing violation of § 9 of Massachusetts' prohibition of unfair settlement practices must be calculated as a multiple of the underlying tort judgment rather than the actual harm caused by the insurer's conduct. On the other hand, where the underlying tort claim settled before entry of a judgment, damages will be determined as a multiple of the actual harm caused by the insurer's violation.

The Court also held that an insured or a tort plaintiff is not required to prove that, pre-judgment, it would have accepted a reasonable settlement offer had the insurer made one. This holding reduces the burden on the plaintiff to prove causation but does not eliminate it entirely.

As discussed in greater detail, the *Rhodes* decision identifies certain pitfalls for insurers to avoid when negotiating the settlement of a tort claim and provides instruction on how courts are likely to apply the double or treble damages prescribed by the Massachusetts Consumer Protection Act.

Massachusetts' Prohibition of Unfair Settlement Practices

The Massachusetts Consumer Protection Act applies where bad acts occur "primarily and substantially" in Massachusetts. The act protects both individuals (G.L. c. 93A, § 9) and businesses (G.L. c. 93A, § 11) from unfair methods of competition and unfair or deceptive business practices, including unfair settlement practices.

In Massachusetts, once tort liability becomes reasonably clear, for individuals, insurers have a duty to effectuate a prompt, fair, and equitable settlement of an insured's or a tort plaintiff's claims.[2] A failure to comply with this requirement constitutes an unfair settlement practice, which may be pursued directly by the insured or tort plaintiff.[3] An insurer's liability for unfair settlement practices will vary depending on the culpability of the insurer. At a minimum, the insurer will be responsible for actual damages or $25, whichever is greater, and attorneys' fees, but, if the court finds that the insurer's action was willful or knowing, the judge must grant double or treble damages.[4]

A central issue in *Rhodes* was whether a court must double or treble the insured's actual damages or the damages awarded in the underlying action. The answer, as discussed by the Supreme Judicial Court, depends on whether the underlying action was settled before or after the court entered judgment.

Underlying Tort Litigation in *Rhodes*

In January 2002, Marcia Rhodes suffered catastrophic injuries when a tractor-trailer hit the rear end of her car, paralyzing her. She, her husband, and her daughter brought a tort action against, among others, the truck driver for his negligence. The Court found that there was never any dispute that the accident was caused by the driver's negligence and that Ms. Rhodes was not contributorily negligent. In November 2002, the truck driver admitted to sufficient facts to support a finding that he was guilty of criminally operating negligently to endanger.

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The accident triggered coverage under two policies: primary coverage was afforded by a policy that had a $2 million limit ("Primary Insurer"), and excess insurance was provided by an umbrella policy with a $50 million limit (the "Excess Insurer"). The case proceeded to trial, and, in September 2004, a jury awarded the plaintiffs approximately $9.41 million, which, with interest, totaled $11.3 million. Defendants appealed. One week later, plaintiffs sent demand letters under c. 93A, § 9 to the Primary and Excess Insurers.

Settlement Negotiations

By September 2002, the Primary Insurer had estimated that the value of the tort case was between $5 and $10 million, exceeding its policy's limit. In January 2004, the Primary Insurer tendered its $2 million policy limits to the Excess Insurer and continued to pay the defense costs of the underlying litigation.

Plaintiffs made settlement demands before the trial, and the parties agreed to mediate; settlement of the tort action, however, did not happen until approximately nine months after the jury verdict. With respect to settlement, the Court focused on the fact that in the spring of 2004, a year after the defendants received a settlement demand for $16.5 million and the Primary Insurer had tendered its limits to the Excess Insurer, the defendants made their first settlement offer for $2 million.

Subsequently, during mediation on the eve of trial, the Excess Insurer offered $3.5 million in response to plaintiffs' demand for $15.5 million. The parties were ultimately unable to reach a settlement, and the mediation broke down before the Excess Insurer increased its offer to the full amount it was authorized to settle ($3.75 million).

Practice Note: The Supreme Judicial Court noted specifically that the fully authorized settlement amount was never offered at the mediation. While it is unknown whether offering the full amount of settlement authority would have made a difference, offering the full amount of settlement authority may avoid a finding of a "willful or knowing" violation of c. 93A, § 9.

Three months after the trial, in response to the plaintiffs' 93A demand letter, the Excess Insurer increased its offer to $7 million, which included the $2 million limits of the Primary Insurer. A week later, the Primary Insurer paid the plaintiffs $2,322,995.75 without receiving any release from the Chapter 93A claim against it. The parties did not reach a settlement of the tort claim until June 2005, when the plaintiffs accepted $8.965 million. By that time, however, the plaintiffs had already filed their Chapter 93A claims against the insurers.

Litigation of the Plaintiffs' 93A Claim

The trial court held that the Excess Insurer violated its duty to effectuate a prompt, fair, and equitable settlement before trial of the plaintiffs' tort action and again following the judgment in the case. The court found the violation to be willful and knowing and calculated damages between pre and post-judgment conduct. As for pre-judgment conduct, the court awarded no damages, having concluded that the plaintiffs would not, in any event, have accepted a timely, reasonable offer. As for the post-judgment conduct, the court calculated damages as the lost interest on the final settlement with the Excess Insurer between the date the negligence case should have settled, January 2005, and the date it actually did settle, June 2005. The court held that the Primary Insurer did not engage in unfair settlement practices.

The plaintiffs appealed the measure of damages applied by the trial court. The Excess Insurer did not appeal the court's finding that it willfully and knowingly violated c. 176D, § 3(9)(f) and c. 93A, § 9. On appeal, the Massachusetts Appeals Court overturned the trial court's award of damages. The appellate court held that the measure of damages for the pre-verdict violation should have been the loss of use of the funds the Excess Insurer had offered in settlement before the trial. The Appeals Court also awarded the plaintiffs loss of use damages for the Excess Insurer's post-judgment violation.

Supreme Judicial Court Holding

The Supreme Judicial Court disagreed with both the trial court and appellate court regarding the measure of damages. Rather than calculate damages based on the plaintiffs' loss of use, the Court awarded damages based on the underlying judgment for $11.3 million, resulting in an award of $22 million. Significantly, before reaching this holding, the Court explained that the plaintiffs were not obligated to prove that, had the Excess Insurer tendered a prompt, fair, or equitable settlement offer, they would have accepted it.

The Plaintiffs' Burden of Proof When Alleging Unfair Settlement Practices

In 2006, the Supreme Judicial Court, in *Hershenow v. Enterprise Rent-A-Car Co. of Boston*,[5] held that, under Chapter 93A, plaintiffs must show a causal connection between the claimed violation of their rights and an actual loss in order to recover damages. Although *Hershenow* did not involve claims for unfair settlement practices by an insurer, in *Rhodes*, the appellate court held

that *Hershenow* required plaintiffs to prove that they would have accepted a reasonable settlement offer had one been made before trial.

On further review, the Supreme Judicial Court rejected the appellate court's application of Hershenow. Specifically, the Court stated "[n]othing in *Hershenow* supports the conclusion that our decision in that case was intended to change the law and place a new burden on plaintiffs to prove that they would have accepted a prompt, reasonable settlement offer, had the insurer made such an offer." Thus, plaintiffs' burden of proving causation will be satisfied merely by proving the insurer's action caused them to suffer a loss or an adverse consequence.

Measure of Damages

When determining the correct measure of damages to apply, the Supreme Judicial Court relied on the Legislature's 1989 amendment to Chapter 93A, §§ 9 and 11. The amendment, in pertinent part, states:

> [I]f the court finds for the petitioner, recovery shall be in the amount of actual damages . . . or up to three but not less than two times such amount if the court finds that the use of employment of the act or practice was willful or knowing violation [Chapter 93A, § 2] . . . . For the purposes of this chapter, the amount of actual damages to be multiplied by the court shall be the amount of the judgment on all claims arising out of the same and underlying transaction or occurrence. . . .

The Court noted that this amendment "was intended to increase the potential penalties for insurers who engaged in unfair claim settlement practices. . . ." Interpreting the language of the amendment and its purpose, the Court held that, whether or not an unfair settlement practice occurs pre- or post-verdict, the measure of damages for a willful or knowing violation will be a multiple of the underlying judgment.

Critically, the Court explained that, where an underlying *judgment* is not reached—for instance, when a case settles—the measure of damages for a willful or knowing violation will be determined by multiplying the *actual damages*, not the settlement. The same is true for an arbitration award. While an arbitrator is entitled to calculate the measure of damages for a willful or knowing violation of c. 93A by doubling or tripling the arbitration award, a court is not entitled to do so.

The $22 million award of damages was double the amount of the judgment and approximately twenty times the amount of damages awarded by the trial court for the plaintiffs' loss of use. Because the Court focused on the amount of the judgment—and not on the amount of the loss of use—the Court explained that the award was not so "grossly excessive" as to violate the Excess Insurer's due process protections, particularly given that a judge, not a jury, made the award of punitive damages. This conclusion all but forecloses the argument that an award of double or treble damages based on a tort judgment violates an insurer's right to due process.

The Court did limit the plaintiffs' recovery by holding that the plaintiffs were not entitled to actual damages for loss of use in addition to multiple damages for the insurer's willful violation.

While the *Rhodes* decision has now clarified the measure of damages, if the Court finds a willful or knowing violation of c. 93A, § 9, there will be collateral consequences from this ruling. On one hand, parties should be more likely to settle c. 93A, § 9 claims where liability is reasonably clear. On the other, plaintiffs may attempt to leverage the *Rhodes* decision to garner more favorable settlements, as any verdict could be doubled or tripled if the court finds, in a subsequent proceeding, that an insurer committed an unfair settlement practice. Given that, insurers should take extra care to document the steps they have taken to promptly, fairly, and equitably settle the underlying tort claims. Such a record should both discourage any effort by plaintiffs to prolong settlement in favor of going to trial and demonstrate the insurer's good-faith compliance with c. 93A, § 9 and c. 176D, § 3(9). ■

Endnotes

(1) 961 N.E.2d 1067, 2012 WL 401034 (Mass. Feb. 10, 2012).

(2) G. L. c. 176D, § 3(9)(f). Unlike an individual plaintiff who can rely on violation of c. 176D, § 3(9) as a *per se* violation of c. 93A, § 9, a business plaintiff must prove a violation of c. 93A, § 2. *Polaroid v. Travelers Indem. Co.,* 414 Mass. 747, 754 (1993); see also *Watts Water Techs., Inc. v. Fireman's Fund Ins. Co.,* SUCV2005-02604-BLS (Mass. Super. Mar. 20, 2009). ("[A] business plaintiff permitted to sue under § 11 of Chapter 93A may not sue under § 9 for alleged violations of Chapter 176D.")

(3) See G.L. c. 93A, § 9; *Rhodes*, 2012 WL 401034, at *5.

(4) Id. at 93A, § 9(3).

(5) 445 Mass. 790 (2006).

Claims Interest Group Committee Members Spotlight

by Donald O. Johnson, CPCU, JD, LLM

The Claims Interest Group (CIG) is the largest of the Society's fourteen Interest Groups with over 1,100 members. The CIG strives to be a source for technical, functional and personal development information for claims professionals. It is led by the CIG Committee, which is composed of CIG members from across the country.

The CIG Committee meets twice a year—first at the Annual Meeting in the fall and again at the Mid-Year Meeting in the spring—to discuss the Claims Interest Group Business and Activity Plans for the year. The committee also holds teleconferences periodically throughout the year to plan and develop the CIG's programming for the year. For those of you who do not know the committee's members, here is a brief bio of each of the current committee members in alphabetical order.

James W. Beckley, CPCU, AIC, ARe

James ("Jim") Beckley is the CIG chair and is Senior Vice President, Claims, for American Agricultural Insurance Company of Schaumburg, Ill. Beckley began his insurance career in 1980 with North Carolina Farm Bureau Mutual Insurance Company; serving as Field Claimsman, District Claims Manager and Regional Claims Manager until 1992. From 1992–2004, he served at Farm Bureau Mutual Insurance Company of Idaho as Vice President of Claims. His current duties at American Agricultural Insurance Company include serving Farm Bureau client companies for their property and casualty reinsurance claims and as an account executive.

Maureen Farran, CPCU, MBA, AIC

Maureen Farran records the CIG Committee's meetings and has served on the CIG subcommittee that finds speakers for CIG programs at the Society's Annual Meeting. She works as a Technical Operations Manager for Broadspire Services, Inc. Her current duties allow her the opportunity to work with different offices throughout the United States handling various workers' compensation issues.

In addition to the CPCU Society, Farran is a member of the Risk Management Society (RIMS) and the International Association of Insurance Professionals. She also had worked extensively with the International Association of Industrial Accident Boards and Commissions on the development and implementation of various Electronic Data Interface (EDI) claims rules. Over the past several years in the industry, Farran has found herself in teaching roles, mentoring roles and management roles.

Cecelia Foy-Dorsett, CPCU, MBA, AIC

Cecelia Dorsett is a member of the CIG Committee's Website Support Subcommittee. She joined Senn Dunn Agency in 2004 and serves as liaison between her clients and the insurance carrier to insure fair claims solutions. She has worked for several years on the carrier side handling multi-line claims including workers compensation, commercial auto, commercial property, and commercial general liability. In addition to serving on the CIG Committee, Dorsett serves on the board of the CPCU Society Piedmont North Carolina chapter and the Claims Advisory Councils of Travelers and Chartis. She also is actively involved in her community, serving on the boards of the United Way of Greater Greensboro and Partners Ending Homelessness.

In April 2012, Dorsett, who is a graduate of Wake Forest University, was recognized by her local Business Journal as one of 17 Women in Business honorees for her work in the insurance industry as well as her community involvement.

Karen Hope, CPCU, AINS, SCLA

Karen Hope is serving her second term on the CIG Committee and is on the Circle of Excellence Subcommittee. She has served on numerous national tasks forces. She earned her CPCU designation in 1994. She also holds an AINS, a Senior Claims Law Associate, and a Master Certified Special Arbitrator designation. She serves on the Louisiana Arbitration Board.

Hope graduated from the University of South Carolina with a Bachelor of Arts degree in Mass Communications. She began her career in the insurance industry in 1984 with State Farm Insurance in Columbia, S.C. Karen joined the CPCU Soceity Bayou chapter in 1998. She has served as a board member, vice president and two terms as president.

Donald O. Johnson, CPCU, JD, LLM

Donald Johnson is the editor of the CIG's newsletter—the *Claims Quorum*. He practices law at D. O. Johnson Law Office, PC, in Philadelphia. He has more than fifteen years' experience in commercial litigation and counseling and has represented clients in state and federal courts. His insurance law practice has concentrated

primarily on insurance coverage litigation involving commercial property and commercial liability policies.

Johnson has written numerous articles on insurance law issues and is a past editor of the National Bar Association's Commercial Law Section's semi-annual newsletter—the Commercial Law Connection. He currently serves as General Counsel of the National African-American Insurance Association. Formerly, he was a member of the CPCU Society's Diversity Committee and a director and vice president of the CPCU Society's District of Columbia chapter.

Barbara J. Keefer, CPCU, JD

Barbara J. Keefer has served on the CIG subcommittee that plans CIG programs for the Society's Annual Meeting. She received her JD degree from West Virginia University College of Law in 1980. She began her legal career at Masters & Taylor, L.L.C., a plaintiff's firm located in Charleston, W.V. She has represented defendants, insurance companies and agents with two other defense firms in Charleston—Goodwin & Goodwin, LLP, and MacCorkle, Lavender & Sweeney, PLLC, before joining Schuda & Associates in 2010. Keefer was employed in-house for USF&G Insurance as the Managing Attorney of its Trial Division and also at Nationwide Insurance Company as a Claims Manager, Claims Legal Counsel, and Managing Claims Counsel.

Her practice areas include coverage; extra-contractual matters, unfair trade practice claims, agent errors & omissions, and administrative law before the West Virginia Insurance Commission, as well as personal injury, toxic torts, construction matters, trucking cases, employment law, deliberate intent, products liability, and premises liability. In addition to the foregoing experience, she is a trained mediator and serves as an Adjunct Professor at Marshall University in Huntington, W.V. in the College of Business Insurance and Risk Management program.

Adam Kutinsky, CPCU, JD

Adam Kutinsky is a principal of the midwest regionally-based law firm of Kitch Drutchas Wagner Valitutti & Sherbrook, which maintains offices in Michigan, Illinois, and Ohio. Kutinsky is co-chair of the Kitch law firm's insurance coverage practice group. He focuses on complex insurance coverage matters and represents several well-known and respected companies of various sizes, including several publicly held companies, as a trial attorney and legal counselor. He has tried multiple cases to favorable verdicts and has successfully argued matters in the Michigan court of appeals.

Kutinsky was recently elected to be the incoming president of the CPCU Society Greater Detroit chapter for the 2012–2013 term. He is also an AV® Peer Review Rated attorney by LexisNexis/Martindale Hubbell, which is the highest rating allowed. It attests to a lawyer's legal ability and professional ethics, and reflects the confidential opinions of the Bar and the Judiciary. Kutinsky was named a Rising Star in 2011 and 2012 by *Super Lawyers* magazine. Rising Stars are attorneys who are 40 years old or younger or those who have practiced for ten years or less. Only 2.5 percent of Michigan lawyers are named to this list every year. He was also recently recognized in *DBusiness Magazine* as a Top Lawyer in 2012.

Barbara Wolf Levine, CPCU, JD

Barbara Wolf Levine is the immediate past chair of the CIG and has been a volunteer leader for the CPCU Society since 2001. She is the CEO and Founder of Exam Coordinators Network, LLC, which is headquartered in Boca Raton, Fla. ECN is a nationwide medical evaluation company which provides services to insurers, attorneys, risk and human resource managers, third party administrators, unions, and funds across all lines of injury claims and coverages. She has owned and operated the company since 1999.

Prior to ECN, Levine worked as assistant vice president of AIB Financial Services in Miami and as Claims Attorney for State Farm Insurance Company. She has been recognized by Ernst and Young as one of the country's Top Ten "Entrepreneurial Winning Women" (Class of 2010).

Brian Panebianco, CPCU, AIC, ARM

Brian Panebianco is a member of the CIG's Webinar Subcommittee. He was recently appointed to serve on the CIG Committee and has officially started his initial 3-year term as of November 2011. Panebianco is the Project Manager of the ClaimSearch® Operations Group at the Insurance Services Office. He joined ISO in 2001 as a Customer Service Representative. He was promoted to ISO ClaimSearch Product Development Analyst, where he supported the Decision Net® segment of ISO ClaimSearch® for several years. Currently, Panebianco facilitates and oversees the research and implementation

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of innovative ideas for the enhancement and expansion of the ISO ClaimSearch® database.

Before joining ISO, Panebianco earned his Bachelor of Science degree in Business Management from William Paterson University in Wayne, N.J. He earned his CPCU designation in 2009 and has served as a new designee representative for the CPCU Society New York chapter for the past two years. He earned his ARM (Associate in Risk Management) in 2010 and his AIC (Associate in Claims) in 2012.

Donna J. Popow, CPCU, JD, AIC

Donna Popow is The Institutes' liaison with the CIG. Her position at The Institutes is senior director of Knowledge Resources and Ethics Counsel. She has direct oversight of claims education for the Institutes, including the Introduction to Claims course and the Associate in Claims (AIC) designation program. In addition, she acts as ethics counsel for the Institutes, overseeing issues that arise in the matriculation process and handling ethics violations.

Donna joined the Institutes in 2002. Before joining the Institutes, she held various claims and legal positions with Marine Office of America Corporation/ CNA in Monmouth Junction, N.J., The Graham Company in Philadelphia, the law firm of Lewis and Wood, also in Philadelphia, and as deputy executive director of the Unsatisfied Claim and Judgment Fund, New Jersey Department of Insurance in Trenton, N.J. She also held claims-related positions with Hanover Insurance Company in Piscataway, N.J. and Liberty Mutual Insurance Company in South Plainfield, N.J.

Donna earned an A.B. degree from Franklin and Marshall College in 1977. She received the Insurance Institute of America's Certificate in General Insurance in 1983 and became a Property Claims Law Associate in 1985. She was awarded a JD degree by Seton Hall Law School in 1988 and was admitted to the Bar in New Jersey and Pennsylvania the same year. She earned IIA's AIC designation in 2002. She earned the American Institute's Chartered Property Casualty Underwriter (CPCU®) designation in 2003.

Kim Riordan, CPCU, JD

Kim Riordan a member of the CIG Committee's Circle of Excellence Subcommittee. She also is a Litigation Manager for Electric Insurance Company in Beverly, Mass. She handles product and general liability claims and litigation. Riordan obtained her CPCU designation in 2003.

Eric J. Sieber, CPCU, AIC, RPA

Eric Sieber became a member of the CPCU Society in 1995 and joined the CIG Committee in 2001. He is the owner of E. J. Sieber & Co., an independent claims investigation firm in Southern California that specializes in factual claim investigation, pre-trial claims investigation and post-trial jury debriefing. He has been a presenter at CPCU local chapters, I-Day, and the 2006 CPCU annual meeting in Nashville.

Sieber has been a claims adjuster and investigator for 36 years. He is a member of the California Association of Independent Insurance Adjusters and the California Association of Licensed Investigators. He also is an associate member of The Association of Certified Fraud Examiners. In addition, Sieber has been president of the Southern California Inland Empire Chapter of the CPCU Society and a member of the CPCU Society National Fraud Resource Task Force. He was a Reserve Peace Officer in the state of California as unit commander of the San Bernardino County District Attorney Reserve Investigator's Unit Pilot Program where he assisted in investigating and prosecuting insurance fraud. Always willing to share his knowledge, Sieber has served as an instructor of CPCU and AINS for the Insurance Educational Association.

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

Chuck Stoll is the immediate past editor of the CIG's newsletter. Stoll also is the Past President of the CPCU Society Chicago Northwest Suburban chapter. He has more than 30 years of experience in the insurance industry as a claims adjuster, risk manager, third party administrator, claims manager, and branch manager. In addition to the usual claim investigations, he has provided consultative services including audits; direct client consultations; training and educational seminars; broker and account manager consultation services; and risk management services

Stoll has worked with captives, risk retention groups, and layered programs. Among other experience, he has an extensive background handling product liability claims, has established a program for clients to report environmental claims in a timely manner, and set up spreadsheets to track Surplus Lines filings and outstanding Surplus Lines issues. His present duties at Protégé, Cunningham Lindsey U.S. include working with regional marketing representatives to market the company's various services to a wide range of clientele; hiring, training, and mentoring personnel; reviewing files for compliance with required company standards; and establishing and periodically reviewing the budget for my office so it can continue to grow.

Rick Villela, CPCU, AIC, ChFC

Rick Villela earned his CPCU designation in 2003 and joined the Claims Interest Group in 2011. He presently acts as the webmaster of our CPCU Claims Interest Group website and is also responsible for eBlast communications.

Villela is presently a Section Manager at State Farm Insurance working in Bloomington, Ill. He has nearly 20 years of claims experience, having worked in many capacities during his career. In addition to his claims experience, Villela led projects relating to organizational change and has broad experience in the analysis and solving of complex procedural issues.

Theresa L. Young, CPCU, ERM, ARM

Theresa Young serves the CIG Committee as the Social Media Coordinator. She is in her third year of service with the committee and is responsible for maintaining the CIG LinkedIn site.

During her working hours, Young is the Property Product Development Manager at AAA Insurance Exchange (formerly California State Automobile Association) and is charged with building and implementing her organization's future property insurance suite of products. She has nine years of Claims experience, working at the adjuster, analyst, and leadership levels. She earned her CPCU in 2008 and began national service the following year.

She recently developed an Insurance Education Development Program at AAA that was implemented last year to incent and reward employees who pursue and complete Institutes coursework and achieve designations from The Institutes while seeking to improve and supplement their insurance industry knowledge. ■

Write a Claims Article and Earn CPD Points

by Donald O. Johnson, JD, LLM, CPCU

Claim professionals with a CPCU designation can earn Continuing Professional Development (CPD) points by writing an article for publication in the *Claims Quorum* (CQ) (or any other CPCU Society Interest Group newsletter).

One of the goals of the CPCU Claims Interest Group is to provide the opportunity and platform for members to hone their writing skills. If you have a hidden desire to write and to see your name on a by-line in an industry periodical, think about writing an article for publication in the CQ.

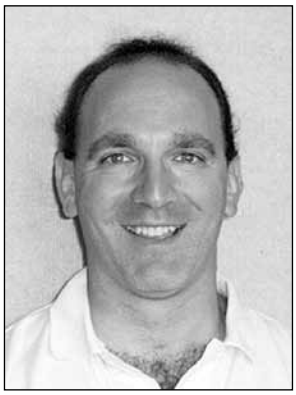
Write an article on what you know best—claims. It can focus on technical claim handling within a particular line of business, claim management issues, claim operations, claim service, claim training and development, or anything else related to the topic of claims. If the topic interests you, most likely it will interest the majority of our 1,000+ Claims Interest Group members and CQ readers. It can be short, 400 words is about a half page, or up to four pages (about 3,000 words).

If you need help getting started, please read the article, "Technical Writing: Don't Let It Be Your Nemesis." The article was written by a former Claims Interest Group Committee member and was published first in the December 2003 issue of the CQ. It is reprinted in this issue for your convenience. It is a very helpful guide that is intended to provide you with an outline to jump start you on your writing.

Feel free to contact **Donald O. Johnson, CPCU, JD, LLM,** the CQ editor, if you need any assistance in choosing a topic, or wanting to know when the next deadline is: donjohnson@dojlaw.com. ■

Technical Writing: Don't Let It Be Your Nemesis

by Brian N. Marx, CPCU



Brian N. Marx, CPCU, served as vice president and newsletter editor of the CPCU Society New Jersey Chapter, and served the Society at the national level as a member of the Claims Section Committee. He is a noted subrogation speaker, and has authored several subrogation-related articles that were published in *Claims Magazine* and in the Claims Section's quarterly newsletter, *CQ*. Marx has more than 15 years of experience in the claims industry, received his bachelor's degree in economics from Cook College, Rutgers University, and his master's degree from Rutgers.

Editor's note: The article is a reprint that was originally published December 2003 issue of *CQ* Vol. 21 No. 4.

Expressing your thoughts on paper can be a daunting task, even for those writers who are familiar with the topic. The art of communicating the written word in a clear, logical, and cohesive manner can be intimidating, as well as mentally challenging. That's why the focus of this article is not about writing style or grammar, but rather a suggested method that can help ease the anxiety and break the psychological barriers you may have about writing a technical article.

Why is this kind of writing so difficult?

- One plausible explanation is the lack of time to sit down and patiently draft your thoughts and ideas on paper.
- Another probable, and perhaps more accurate, reason is the lack of practice.

No matter what the reason, this article will:

- Offer suggestions to assist those who would like to write technical articles.
- Help future authors develop a method for writing technical articles.
- Identify the benefits one can reap from sharing his or her ideas with the insurance community.

I will set three ground rules before discussing a simple methodology for technical writing:

Rule #1: You do not have to be a grammarian to be a good technical writer. Each writer has his or her own technique and style of writing.

Rule #2: Intuition, creativity, and motivation are three things you need to get started.

Rule #3: To be effective, each article should contain the following four characteristics: creativity, clarity, cohesiveness, and consequentiality. I call these the four Cs of writing.

Creativity means the article's content is original (i.e. one's own work), has insight, and the reader says, "Gee, I did not realize that relation existed" or "I didn't know it could be analyzed or done that way."

Clarity means that anyone who is only slightly familiar with the topic can understand the message or purpose being conveyed by the author.

Cohesiveness means that the article is focused and the ideas are tied together and presented in a logical manner. Cohesiveness greatly supports clarity.

Consequentiality means the article has significance to the industry, practical application to the readers' job performance, or personal application outside of work. Writing about an emerging issue, how a recent landmark case affects a line of insurance, or methods on how to save money in claim handling are good examples of consequential topics.

The following five sections are the stages of developing, drafting, and putting the finishing touches on an article. These are presented in the order in which I prefer to do them. However, the order really depends on the technique and preference you choose.

(1) **Selecting a topic:** As mentioned, the topic should be one of interest and significance to the insurance industry as a whole or a large segment of it. Audiences usually identify with recent and emerging topics, since these subjects have an immediate effect on them. The topic should be one you're both interested in and knowledgeable about. Sharing your unique, on-the-job experiences and lessons learned from them add tremendous value to a piece of writing.

(2) **Selecting a title:** A title should be eloquent, eye-catching, and accurately convey the meaning of the article in a short, concise manner. The length and content of the title are important, since the title is the first thing potential readers come in contact with. If the title is not interesting, the article, even if well written, may never get read. All that time and effort wasted!

(3) **Writing the introducing paragraph and conclusion:** These two segments of the article are written before the main body of the article, because it forces the author to focus on the message he or she is going to convey to his or her readers. The introduction briefly, but concisely and effectively, articulates what the article is going to

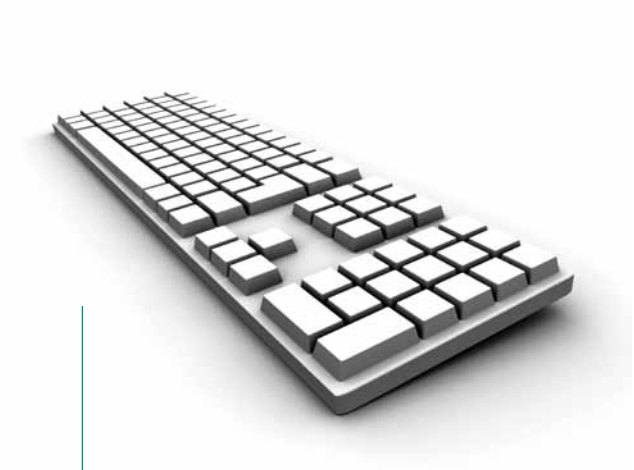
be about (expanding on the meaning of the title), its purpose, and what the reader can expect to glean from it. Like the title, it must peak the readers' interest so that they will continue to the main body of the article. The conclusion summarizes and integrates the salient points into the meaning and purpose of the article.

(4) **Writing the main body:** The best way to tackle the main body of a paper is to write an outline on the major points you want to make and how each is going to prove or reinforce the main theme. Before including an argument or idea, make sure it does not introduce a new idea or concept that could potentially cause your article to lose cohesiveness or, even worse, your audience to become confused and lose interest. Once you have provided enough different ideas, perspectives, examples, or arguments, each as concisely as possible to support your main theme, stop! Too often authors, in an effort to impress their readers, try to include every last copious detail about the topic in their writing. This is counterproductive, ineffective, and usually causes the reader to lose interest. Good authors will say just enough to maintain and, hopefully pique, the readers' interest, provide them with enough information about the subject, and, if they wish, how and where they can procure additional information.

(5) **Polishing up the article:** Even though the main components of the article are now complete, this does not mean that the article is finished. You should always wait at least a few days before scrutinizing the article. It should be reviewed by examining each of the following aspects separately: typographical and grammatical accuracy, technical accuracy, and to make sure it accurately and effectively conveys its meaning and purpose. In other words, does it say what you want it to say and meet the four "Cs?" One method of accomplishing the latter aspect is to have a peer (preferably one who is knowledgeable about the subject and painfully honest) review the article.

Writing technical articles can be a very rewarding experience and provides the following benefits to the writer:

- **Enhances confidence:** Once an author demonstrates that he is able to effectively articulate his ideas on paper, he can be considered a resource to others. In doing so, he creates a forum for himself, develops a reputation as an expert, and establishes a rapport between himself and his peers.
- **Enhances knowledge about the subject matter:** Additional ideas, relationships, and the application of concepts already known to the writer can come to mind when she puts her ideas on paper. Simply knowing a topic, working with it on the job, or explaining it to others are a lot different than putting it down on paper in an understandable and informative format.
- **Creates networking opportunities:** You never know who may be reading your article. Readers may contact you for additional insight, to advise of an upcoming event where you may be able to present this or related subject matter, about an employment opportunity or, if self-employed, about a potential marketing opportunity or assignment.
- **Documents your knowledge:** Publications add prestige to any curriculum vitae—there's no doubt about it. Writing is a very powerful tool. And, most clients, employers, and prospective employers admire those who get their work published. Your portfolio of writings demonstrates and even legitimizes to others the purview and scope of your knowledge, as well as manifests a seal of approval from those organizations that published your work.



- **Provides a sense of accomplishment:** Let's face it, writing is a skill as much as it is an art. And, it is not easy. A good writing technique takes a long time to develop and requires a lot of practice. It feels great when you are satisfied with your work and others compliment you on a job well done.

Before closing, I would like to make two very important comments to all those who are considering writing an article or who write less due to the amount of time and effort to complete one. First, don't try to say too much in one article. If you have a comprehensive topic that you want to cover like a blanket, divide it up and advise the reader of the sequels. It will keep your readers interested and create additional marketing opportunities for you, either in the labor market or to prospective clients. Second, give credit where credit is due. If you are using another author's words or ideas, remember to properly footnote the references so that you avoid any potential allegations of plagiarism.

In closing, I would like to say that the more you write, the easier and more enjoyable it will get. The Claims Section invites its members to submit articles for consideration to be published in the CQ. The committee will gladly assist you on any topic you wish to write on so that you to can reap the rewards mentioned. So . . . good luck and keep those ideas and articles coming. Our phone and fax lines, website, and e-mail addresses are open and waiting to hear from you. ■

Washington, DC, the Place to Be in Fall 2012: The 68th CPCU Society Annual Meeting and Seminars

by Donald O. Johnson, JD, LLM, CPCU

Washington, DC, will be the setting for high drama this fall, as the political parties duel to elect their candidate for president of the United States and battle for control of Congress. CPCU members and their guests who converge on the area two months before election day will be able to experience this electric atmosphere as well as take advantage of a full course of insurance educational and networking activities by attending the 2012 CPCU Society Annual Meeting and Seminars.

The Annual Meeting's theme will be Reflections of Progress. The significant progress that our association continues to enjoy is evidenced by the Society's affiliation with The Institutes. The meeting dates for this year's gathering are September 8 through 11.

The 2012 Annual Meeting, like those that preceded it, will provide you and your colleagues with an unparalleled opportunity to expand your knowledge about insurance and risk management trends, develop your leadership skills, and make critical business connections. We encourage all members to attend and to help demonstrate their continued commitment to the CPCU Society's principles of excellence and ethical conduct. Registration will also be open to nonmembers, so take advantage of the occasion to invite your industry friends and acquaintances to participate.

Assembling in the nation's capital will allow annual meeting attendees to visit DC's many historic sites and impressive list of more recently developed monuments, museums, and entertainment centers. The elegant Marriott Wardman Park Hotel will be the venue for numerous on-site activities, such as the general sessions, conferment ceremony, seminars, and exhibits. It is in a superb location, conveniently located near public transportation (e.g., the metro), away from downtown traffic, and in close proximity to the national zoo and the national cathedral. ■

Announcing New AIC Tracks

In response to requests from our customers, The Institutes have developed new Associate in Claims (AIC) tracks to help claims professionals learn how to efficiently and effectively navigate the ever-changing landscape of claims throughout the entire loss-adjustment process. Each track will improve job effectiveness, enhance the ability to handle coverage disputes, help mitigate costly lawsuits, and reduce time and costs associated with each type of claim.

There are now tracks for liability, auto, property, workers compensation, and multi-line adjusters.

To earn the AIC designation, all candidates must complete these courses:

- **AINS 21**—Property and Liability Insurance Principles
- **AIC 30 or 33**—Claim Handling Principles and Practices
- **Ethics 311**—Ethical Guidelines for Insurance Professionals OR Ethics 312—Ethics and the CPCU Code of Professional Conduct

Candidates may select which track to pursue:

- **Liability**—AIC 42, Liability Coverages; AIC 32, Liability Claim Practices; and AIC 37, Managing Bodily Injury Claims
- **Auto**—AIC 38, Personal Auto Insurance and the Management of Bodily Injury Claims, and AIC 39, Auto Liability Claims Practices
- **Property**—AIC 41, Property Coverages, and AIC 31, Property Claim Practices
- **Workers Compensation**—AIC 34, Workers Compensation Claim Practices, and AIC 37, Managing Bodily Injury Claims
- **Multilines**—AIC 43, Property and Liability Coverages; AIC 31, Property Claim Practices; and AIC 32, Liability Claim Practices

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Additionally, on April 1, The Institutes began offering online the three Medical Claim Trainer courses that were previously offered through Medical Directions. Medical Directions is a training provider specializing in intermediate- and advanced-level medical insurance training for casualty and workers compensation adjusters and nurses.

These online courses draw on years of claims and litigation experience to create a medical training program for workers compensation, auto, and liability claims professionals. They are designed to go beyond the medical record interpretation and terminology courses currently in use within medical claims. The final exam is embedded in each of the online courses, and each course has been approved separately for continuing education (CE) credits.

- **Course 1**—Injuries of the Back, Fibromyalgia & Reflex Sympathetic Dystrophy
- **Course 2**—Injuries of the Extremities
- **Course 3**—Closed Head Injuries, Psychological Claims and Temporomandibular Joint Disorder

The Medical Claim Trainer courses were specifically designed for workers compensation, auto, and liability adjusters. Course participants should accomplish one of these actions before taking them:

- Work in claims for at least six months
- Complete a medical records interpretation course
- Complete a medical terminology course

The Institutes recommend the AIC tracks and the Medical Claim Trainer courses for in-house claim adjusters, field claim adjusters, insurance litigators, senior customer service representatives, agency principals, and third-party administrators. For more information, visit The Institutes' website at www.TheInstitutes.org/AIC ■

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Claims Quorum

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