Personally Speaking

Personal Lines Section Quarterly

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CPCU SOCIETY
INSURING YOUR SUCCESS

Letter from the Chairman-Elect

by Dale M. Halon, CPCU, CIC

Put Something In
by Judy Blume

Draw a crazy picture,
Write a nutty poem,
Sing a mumble-gumble song.
Whistle through your comb.
Do a looney-gooney dance
Across the kitchen floor.
Put something silly in the word
That ain't been there before.

I've always been inspired by this children's verse. It triggers me to think beyond what I know today and approach each next step with youthful enthusiasm. I also find it meaningful as a guide for the Personal Lines Section both from a historic view and for mapping out a vision for the future.

The historical significance goes to the roots of this section. As you may know, this section is new. The energy to create this community came from one passionate individual. He felt he was missing the opportunity to relate with others that shared his interest—personal lines—through the existing choices he had within the CPCU family. As he talked to others, he found there were many that shared this element of contact with peers. It was **Clint Gillespie, CPCU,** who rose to the calling and challenge to lay the foundation of the Personal Lines Section. I was fortunate enough to meet Clint after he had done much of the hard work. He asked me to join him on the original steering committee building the momentum from what he created.

As my first official duty as incoming committee chairman, I would like to formally thank Clint for his dedication, vision, and leadership. He can "do a looney-gooney dance across the kitchen floor" like no other. His inspiration will pass on through me and hopefully to lots of other people. While he'll be missed at our committee functions, he'll be giving his time as a national governor for the CPCU Society. Clint, we wish you the best of luck. Thanks for leaving us with your legacy.

Yikes! Now the reality sets in for me to "put something silly in the world that ain't been there before." Those of you that know me, the silly part is easy. But what *ain't quite been there before* is what I would like to see our mission be over the next three years. That is to build on the idea of a CPCU Personal Lines Community. As I meet people in the industry, I am hearing the desire from fellow insurance professionals to be able to:

- Meet other insurance professionals with common interests.
- Meet other insurance professionals that have complementary interests.
- Discuss problems and successes with other insurance professionals.
- Discover new ways to apply their knowledge.
- Find outlets for creativity and growth.
- Openly discuss common issues and concerns.

. . . and to be able to do much of this in a way that is easy for each individual style.

The vision I have for this community is to be able to be a conduit to meet those needs in a variety of ways. We are lucky in 2002 to have tools that were not available in 1992. We have prolific access to information and to a variety of communication methodologies. Our community's charge will be to use the tools for the benefit of each other. That is what a community is all about.

As a community, we will continue to have our community newspaper. *Personally Speaking* will continue being one of the ways we can communicate our interests and knowledge across the miles. While *Personally Speaking* might change from its present format, it will always have a place for us to showcase our community knowledge and to share it among members. It will be a place where we can open up dialogue to issues and ideas. It will be our own banner around which we can rally. Our *Personally Speaking* editor, **Diane Baker, CPCU, ARP,** will continue to ask for other community members to share their knowledge by authoring articles or finding others to provide articles that will benefit other community members.

I am most excited about the new Personal Lines Section web site. The first version will have been launched by press time of this article. While this first iteration is likely to be a long way from what it will look like when my committee term expires, I know it can be a vehicle that will make the rest of my vision a reality. It is the perfect medium for a group such as ours.

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We plan on building a member-only feature that will give access to discussion threads, chat rooms, announcement lists, industry calendar, links to valuable information, and the ability to join a group within the community for those with common interests.

Where all that goes is up to you and me as dues-paying members of the Personal Lines Section community. While the steering committee has lots of ideas, I am going to throw the task of idea generation back over the wall to the membership at large. We would like to build this community based on the needs of the membership. I ask that you all share your ideas and desires with me or with any of the other committee members. I ask that you visit the new web site often. That way you can see what is new and what others' interests are.

Now I will shut up and whistle through my comb. Please, feel free to call or e-mail me any time with your thoughts, ideas, or concerns. Thank you for being part of the community. ■

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Credit-Based Insurance Scoring: A Simmering Debate

by Robin Olson, CPCU

Editor's note: *This article is copyrighted by IRMI and is reprinted here with permission.*

Robin Olson, CPCU, *is a member of the CPCU Society's Personal Lines Section Committee.*

"Regard your good name as the richest jewel you can possibly be possessed of—for credit is like fire; when once you have kindled it you may easily preserve it, but if you once extinguish it, you will find it an arduous task to rekindle it again."—

Socrates

Imagine this scenario. You are a retired carpenter and you have just opened your bill for your personal auto insurance renewal. You have not had a ticket or accident in more than 3 years; however, your auto insurance premium has still jumped significantly. As you research this matter, it becomes apparent that your premium rose, in part, due to your credit rating. It's not that your credit is poor per se; it is simply thin because you normally pay cash for your purchases. Is this fairness on the part of the insurer? Not according to consumer groups and a growing number of state insurance departments.

Credit-based insurance scoring is becoming a popular measure of risk by insurance companies. One survey last July indicated that 92 percent of insurers now use credit scores in accepting policies and/or setting rates. The argument is that a person's credit rating is positively related to the future likelihood of insurance losses. In other words, persons with excellent credit are less likely to have future insurance losses and vice versa. There are numerous and substantive arguments for the use of credit-based insurance scoring in personal lines policies, including the following.

- Use of credit-based insurance scoring has legal authority.
- Credit characteristics are predictive of future losses.
- The use of credit improves insurers' ability to measure risk.
- The use of credit reduces the insurer's uncertainty in writing new business.
- Studies indicate there is no correlation between income level and credit rating.
- No evidence indicates that credit-based scoring is inherently discriminatory.

Due to the controversial nature of this issue, various perspectives are presented to provide a balanced view of the debate.

National Association of Independent Insurers' Perspective

The National Association of Independent Insurers (NAII), an influential, full-service property and casualty trade association, strongly supports the use of credit in underwriting and rating personal lines exposures. According to vice president and western regional manager, Sam Sorich, this use has legal authority due to the passage of the Fair Credit Reporting Act (FCRA) more than 30 years ago.

"The FCRA clearly authorizes the use of credit information for insurance underwriting purposes," said Sorich. He went on to draw a direct correlation between credit characteristics and a person's risk of having loss. He referred to numerous studies, including insurer studies and credit risk-scoring company studies, to support this argument. NAII rejects the allegations that insurance scoring is inherently discriminatory to lower-income persons.

"The scoring does not try to determine how much money someone has, but how he or she manages his or her financial affairs," Sorich said. He said that the disbursement of scores is similar through all income strata. In addition, the insurance score provides a more uniform and objective standard, reducing the likelihood of human bias. When asked about errors in credit reports, Sorich believes that these are at a low rate and could swing in both negative and positive directions to the consumer.

"There are avenues for persons to remedy the problem, such as direct communication with the credit bureau," he answered.

Some states have proposed placing a cap, such as 20 percent, on the difference between the premiums charged to people with excel-

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lent credit and those with poor credit. The NAII believes this is an arbitrary figure.

"If the data indicates that credit information should have a greater impact, we think it's a fair practice to use it," said Sorich.

State Farm's Perspective

State Farm Insurance, one of the top writers of personal lines insurance in America, firmly believes they have the right to use credit characteristics in their underwriting models. According to Dick Luedke, a public affairs specialist with this insurer, State Farm matched up credit characteristics from a prior period for more than one million of its insureds and then compared this to their loss experience for the following two years.

"The results of the study indicates a predictive correlation between credit characteristics and claims experience," he said.

State Farm is in the business of measuring risk. "This improves our ability to measure risk," according to Luedke. "It thus results in greater fairness for consumers." He also cited other studies, including those performed by the Casualty Actuarial Society and the Virginia Bureau of Insurance, both of which reported similar correlations and results.

When asked about a potential bias against lower-income families, Luedke said, "We found no correlation between income level and credit rating. How you manage your money is not a function of net worth or income."

State Farm's media fact sheet on this issue states, "Our models are not designed to assess wealth, income, or creditworthiness, but focus on the prediction of future insurance losses . . . we believe the use of these models will lessen the extent to which those who represent higher potential risk are subsidized by those who represent lower potential risk."

According to Luedke, State Farm is careful regarding the way they use this information in underwriting. For example, they do not use it for renewals. In addition, for those applicants with no credit history, the insurer uses regular underwriting practices, since the model would be unable to generate a credit score.

"We also build into our underwriting the flexibility in order to reevaluate based on the updating of a credit report containing errors," he said.

When asked for specific examples or scenarios regarding the models State Farm has developed, Luedke cited that this was proprietary information, which they have to protect for competitive reasons. Their work in this field began in the mid-1990s and continues to evolve today.

Fair, Isaac and Company's Perspective

Fair, Isaac and Company is described as a leading provider of "creative analytics." According to Craig Watts, consumer affairs manager with the firm, "We help businesses solve problems and are the pioneers of credit risk scoring through the development of mathematical models." Fair, Isaac and Company developed this work in the early 1990s and now has more than 300 insurers using their mathematical model.

"We look at a given body of credit reports from two years ago," Watts said, "and see how they perform loss-wise in the subsequent two years." The company found a strong correlation between the credit characteristics and loss experience.

"Our opinion is that the consumers who are more stable and responsible in their use of credit tend to be better insurance risks. They tend to pay more attention to car and home maintenance and are more careful drivers," he stated. Fair, Isaac believes that individuals who are more stable in one aspect of their lives (e.g., credit characteristics) tend to be more stable in other aspects of their life, such as being careful and responsible in their driving.

When asked about criticism from some groups that Fair, Isaac is not truly independent from insurance companies, Watts said that, "Much of the criticism comes from people who haven't studied this issue or who have not read any of our findings." He mentioned other entities have performed their own studies with similar findings, such as Tillinghast-Towers Perrin and the Virginia Bureau of Insurance study mentioned earlier in this article.

Watts responded quickly to concerns about the use of credit to discriminate against lower-income families and minorities. "We found that higher-income persons tend to have lower credit scores. They tend to be more careless about their money, knowing that more of it is coming. If you don't have much money, you tend to protect it better," he said. Fair, Isaac and Company believes that the use of credit history in underwriting and rating can help lower insurance premiums for more responsible people and drivers.

Consumer Organization's Perspective

The Consumer Federation of America (CFA) opposes the use of credit-based insurance scoring. CFA Director of Insurance J. Robert Hunter sees the use of credit as a surrogate for race and income.

"Intuitively, poorer people do not use credit as often or as wisely," he said. One of his chief concerns is that insurers refuse to share their mathematical models, as they consider this proprietary information.

"Why can't the insurers agree to an independent study, not affiliated with the insurance companies?" he asked. In his opinion, a prominent statistical professor could be selected to review the data and information with an appropriate confidentiality agreement. "Insurers have not agreed to this," he commented.

Hunter, a former insurance commissioner of Texas, further believes that the use of credit decreases incentives for people to reduce losses. "What do you say to someone who asks his insurance agent about ways to reduce his premium?" he said. "The agent might respond 'drive more carefully.' But with credit, there is virtually nothing a consumer can do. He is locked into that price. There is no incentive for him to improve his rate."

The Center for Economic Justice also believes that the use of credit-based insurance scoring is inherently unfair. Birny Birnbaum, the executive director, believes one's credit report "is not a complete picture of a person's credit. Some people choose not to use credit, but are good money managers. People in poorer neighborhoods often frequent vendors and other companies (e.g., rent-to-own companies) that do not report to the credit bureaus. These people often do not use professional lending institutions."

Birnbaum also believes that events can happen in people's lives that are beyond their control, such as medical catastrophes or layoffs. "These people are unfairly penalized," in his opinion.

Another concern of the Center is that the use of credit in these secret algorithms reduces the state insurance department's ability to regulate rates. The argument is that regulators are less able to properly evaluate the rating mechanisms used by the insurers and the effects on consumers.

Birnbaum believes that the use of credit is discriminatory to lower-income people. "These factors are weighted against poor people. It relates more to assets, not financial management," he stated. In addition, Birnbaum believes one of the important purposes of insurance is to provide incentives to reduce losses. "The use of credit does not provide the necessary incentive to reduce losses," he said.

According to these consumer groups, approximately 30 states have some type of bill before the state legislatures to restrict the use of credit-based insurance scores. So, how are the state insurance departments handling this hot issue?

State Insurance Departments' Perspective

The National Association of Insurance Commissioners (NAIC) is looking seriously at this issue. The NAIC point person in this controversy is Joel Ario, the Oregon Insurance Administrator. He is heading up an NAIC work group, whose purpose is to create a model act for state insurance departments to consider and potentially implement.

"There are two issues to address," he said. "The first is the process issues, covering items such as disclosure procedures. There appears to be much agreement on this. The second is the substantive issues, such as restrictions on the use of credit in underwriting or rating, for which there is more conflict."

Ario said, "There are real issues to consider, particularly concerning the impact on poorer people. Is there actuarial correlation between credit and future losses? Yes, there is probably good evidence of this."

He believes, however, more study of the mathematical models is needed, which should include conditions of confidentiality. In Oregon, insurers can currently use credit-based insurance scoring. He believes the matter will be addressed in the next several months at the Oregon Insurance Division and restrictions are a distinct possibility in the future.

This use of credit is being heatedly discussed at the Washington Insurance Commissioners Office as well. Stephanie Marquis, a public affairs officer with this office,

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said that this whole issue began when hundreds of complaints started filing into their office. She cited a "high number of complaints from women with credit problems due to divorce and people who were laid off due to the economic downturn."

According to Marquis, a bill restricting the use of credit-based insurance scoring is now out of the state senate and house committees, with solid support. It will now go to a vote before the full senate and house in the next few weeks. Some of the restrictive provisions of the bill include the following.

- An empty credit history cannot be utilized in any scoring.
- Credit problems relating to medical or health problems must be disallowed.
- The total line of credit available must be disallowed (some credit scores may penalize someone with high credit availability as this may be viewed as risky).
- Disputed credit history must be disallowed while the dispute is under review.
- Any credit factors that could restrict lower-income persons' access to insurance must be disallowed.

According to Marquis, these types of restrictions are being considered or debated in slightly more than half of the state insurance departments.

Conclusion

The more this issue is analyzed, the more complex and thorny it becomes. The insurance consumer groups are squarely and vehemently lined up against the insurance companies. The regulators, caught in the middle, have to look at it from both perspectives. As one commissioner put it, their objective is to "protect insurance consumers while promoting a positive business climate for insurers and insurance agents alike."

This hot potato makes for a particularly difficult and clumsy juggling act. Expect compromises where neither claims total victory. In other words we'll probably see some restrictions imposed on the use of credit-based insurance scores in many states—but not a complete ban on the practice. ■

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Favorite Web Sites

In each issue we will continue to publish favorite web sites.
Be sure to send in your favorite web site to share with other insurance professionals!
Let us hear from you! E-mail your favorite site to: dbak8@allstate.com.

www.insure.com: Consumer-oriented web site with a wide variety of insurance information for customers.

www.irmi.com: Web site of the International Risk Management Institute, which provides articles on insurance and insurance-related topics.

www.ultimateinsurancelinks.com: Web site (maintained by G. Barry Klein, CPCU, CLU) that links to hundreds of insurance web sites.

www.ambest.com: Web site of the A.M. Best company, which provides access to individual insurance carrier financial ratings, and additional "comprehensive, quality data covering all aspects of the insurance industry."

www.naic.org: Web site of the National Association of Insurance Commissioners.

Meet Your Personal Lines Section Committee Members!

Editor's note:
In this issue I want to introduce to you my fellow insurance professionals who give of their time and talents to support the CPCU Society's Personal Lines Section.

Congratulations to our chairman-elect, Dale Halon, CPCU, CIC, and our thanks to Clint Gillespie, CPCU, whose term as chairman ends on October 22, 2002, for his dedication and service on this committee.

Bill Atkins, CPCU, is personal lines vice president for North Pacific Insurance Company, a member company of the Liberty Northwest Group. Bill has spent 30 years in the industry, with the majority of that time being in personal lines. He received the CPCU designation in 1981, and is a past president of the CPCU Society's Oregon Chapter.

Diane Baker, CPCU, ARP, is assistant vice president of field and product operations at Allstate Insurance Company. Diane joined Allstate after graduating from the University of North Carolina in 1967. Her experience includes working in the Operations, Controller, and Underwriting business units. Diane earned her CPCU designation in 1989, and served on the CPCU Society's Indiana Chapter board for a number of years as public relations chairman. She was also a member of the Indiana State Advisory Insurance Board for Indiana State College in Terre Haute. Prior to the Personal Lines Section, Diane was a member of the Underwriting Section Committee, where she served as editor of *Underwriting Trends.*

Dan Blodgett, CPCU, AIM, AIS, is an auto business analyst in the Systems Department of State Farm's Home Office in Bloomington, IL, where his specialty is personal lines auto insurance and related systems technology. Dan is originally from Michigan, where he was a personal lines auto underwriter for several years. He was also a supervisor in the State Farm Payment Plan. Dan is currently a member of the CPCU Society's Central Illinois Chapter and works on, and/or chairs, various committees. Previously, he was a member and former president and vice president of the CPCU Society's Southwestern Michigan Chapter. Dan received his CPCU designation in 1995.

Fred Craig, CPCU, CIC, is an insurance industry professional with more than 20 years' experience. Fred has a broad background of experience in claims, underwriting, marketing, training, as well as at executive-level positions. During the past five years, he founded and grew a successful information technology consulting firm. Fred spends most of his time now on independent consulting and training assignments in the insurance and technology market.

Leslie DeCaporale, CPCU, is a manager in market research and customer relationship management with corporate marketing at MetLife Auto & Home in Warwick, Rhode Island. She has more than 20 years in the industry. She is a member of the National Association of Insurance Women, and the CPCU Society's Rhode Island Chapter.

Judy Frey, CPCU, is a claims adjuster for Erie Insurance Group. She has been in the industry since 1986, and worked on the agency side for 15 years before going into claims. In addition, she teaches a licensing course for Professional Insurance Agents of Pennsylvania, Maryland, and Delaware.

Dale M. Halon, CPCU, CIC, joined ChoicePoint in 1997 after working in the insurance industry since 1977. He is responsible for direct sales and consultation for insurance companies' marketing programs. Dale is a graduate of the University of Massachusetts at Amherst (1977). In addition to ChoicePoint, he was with Fair, Isaac and Company, working with insurance companies to implement predictive models and credit data into their insurance processes. He also helped insurers develop direct marketing programs at DoubleClick. Dale's industry experience includes 17 years in key underwriting, marketing, and product development positions focusing on personal lines insurance. He has published articles for insurance trade publications and industry groups on predictive modeling, the use of consumer credit in insurance, and multi-channel marketing.

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Werner E. Kruck, CPCU, ASLI, has more than 25 years of experience in specialty product creation and management, marketing and distribution development, and information technology, both in the United States and overseas with AIG. He has managed mobile home products for Foremost, The Travelers, Markel, and American Modern Insurance Groups; developed innovative habitational programs; built new distribution channels; and served as CIO. He is currently a principal in the insurance practice of Alpha Financial Services Consulting, and lives in Cincinnati.

Eileen Lehman, CPCU, AAM, AIM, AU, is director of underwriting at Response Insurance. She joined the company in 1997, when it was in a start-up phase and had not yet sold its first policy. Eileen started in the industry in 1978 and has worked for other carriers, including Hanover and USF&G. For the most part, she has been on the personal lines underwriting side, but she also has background in small commercial and marketing. She received her CPCU designation in 1990. She has been active in her local CPCU Society chapter, and is a past president of the CPCU Society's Westchester Chapter. In addition to CPCU, she also serves on ISO's Auto Panel.

Rob Olson, CPCU, AAM, ARM, ARP, is a senior research analyst and editor for International Risk Management Institute, Inc., in Dallas. He is the author of *Personal Risk Management and Insurance*, a 1,500-page reference manual for personal lines. He also serves as an adjunct professor at the University of North Texas, where he teaches risk management classes. Rob is a frequent contributor to *Personally Speaking*.

Kent W. Schaum, CPCU, AIC, has 16 years of experience in the claims property and casualty industry. He is the senior claims supervisor for Amica Mutual Insurance Company. His responsibilities include oversight of a multi-jurisdictional claims department, which handles complex coverage, litigation, SIU, technology, and compliance issues for all personal lines.

Jerry Tuttle, CPCU, AIM, ARM, ARe, is a senior vice president and senior pricing actuary for Platinum Underwriters Re, the successor company to St. Paul Re, in New York City, where he prices treaties in the casualty underwriting department. His insurance designations also include Fellow of the Casualty Actuarial Society and Fellow of the Canadian Institute of Actuaries. He has contributed to several CPCU and IIA textbooks as a reviewer, is the web master of the actuarial jokes web page (www.actuarialjokes.com), and has written an award-winning short story for the Society of Actuaries. Jerry also frequently contributes to *Personally Speaking*.

Tina Weinstein, CPCU, CLU, ChFC, works for State Farm Insurance in Bakersfield, California, where she is an underwriting operations supervisor in the Personal Lines Fire Operation. In her spare time, she teaches INS courses and raises her two four-legged children (Weimaraners). ■

Going Down with the Ship

by Elisabeth Hendrickson

Elisabeth Hendrickson *is an independent consultant specializing in software quality. With more than a dozen years of experience in the software industry, Hendrickson has been a programmer, tester, technical writer, support technician, and manager (sometimes simultaneously). You can read more of her thoughts on software quality at www.qualitytree.com. Her article was found on StickyMinds.com, which features information on software quality.*

Editor's note: *The following article first appeared in* TQ*, a sister publication from the CPCU Society's Total Quality Section. While it focuses on work in software, its lessons apply to just about any project or strategy in our work environment. Enjoy and thanks to* TQ!

In 1628, the grand warship Vasa launched for her maiden voyage. What started as a ceremonial trot around the harbor ended in disaster. Ten minutes out, the Vasa sank, taking many of those aboard with her.

You might be thinking, "Thanks for the history lesson, but what does this have to do with software?"

I know something about the sinking of the Vasa because I had the opportunity to visit the Vasa in her home, the Vasamuseet, last year. While there, I spent hours reading the plaques and playing with the computer simulation of her capsizing. That's when I realized that the Vasa story is being relived today in organizations throughout the software industry.

The Vasa's is a story of a project gone awry, taking the project team down with it. Some of the contributing factors that led to the Vasa sinking centuries ago will seem terribly familiar to software folks today.

It was an ambitious project. With 64 guns on two gundecks, the Vasa was to be the mightiest warship built to date. Thus it was especially inconvenient that . . .

The leadership changed mid-project. The original architect, Henrik Hybertsson, died before the project could be completed. His assistant, Hein Jacobsson, took over after his death. Not having the original ship builder see the project through to completion was an even bigger burden than you might imagine because . . .

There were no detailed plans. At the time the Vasa was built, experienced ship builders used their past experience along with key measurements to guide the ship building process. And then . . .

Upper management dictated the ship date (literally). King Gustavus Adolphus decreed that the ship must be finished by 21 July 1628 or the shipbuilders would face "His Royal Majesty's disfavor." Displeasing the king was then, as it is today, a career-limiting move. The king also saw to it that . . .

There were late-breaking changes in the design. The hull of the mighty war ship was created from four segments of wood. Typical designs at the time involved only three segments of wood, so some archaeologists are guessing that the size of the ship was expanded during construction. Further, the king decreed that there would be two closed gundecks rather than the traditional one, thus allowing more, bigger guns on board. The added weight above the waterline resulted in an instability that was detected when . . .

The ship failed its acceptance test. One of the final tests that the team undertook was a stability test known as the heeling test. In this test, 30 sailors ran back and forth along the deck to make the ship rock. The test was halted after just three runs because the ship was rocking so badly. The ship builders and the king were not present for the test. Admiral Fleming, the admiral of the Vasa, was present, but seemed unconcerned by the test results. He approved sailing the ship despite her apparent instability. How could someone ignore such dramatic test results? It's understandable if you consider that . . .

The cost of failure was too high. So much money had been poured into the Vasa project that failure was inconceivable. By the time the team ran the heeling test, there was little that could be done to change the ship. Having worked on a few software projects with the same characteristics as the Vasa, I can guess that it was easier for the project team to ignore the bad test results than to consider scrapping the entire project.

Applying Lessons from the Vasa to Software

So what can we learn from this disaster that we can apply to our work in software?

Lesson #1: Break ambitious projects into smaller deliverables.

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Going Down with the Ship

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Like many software projects today, the Vasa was a tremendously ambitious project. Although we can't stop doing ambitious software projects, we can break them up into a series of less ambitious projects. That's an advantage that software development has over shipbuilding—you can build parts of the system that work independently, then bring them together into a cohesive whole.

Lesson #2: Share knowledge. Henrik Hybertsson was the visionary behind the Vasa. When he died, he left behind a team that was ill equipped to deal without him. We can't prevent key project people from leaving, but we can mitigate the effects of their leaving by documenting plans and cross-training personnel.

Lesson #3: Manage upward. King Gustavus was accustomed to people doing what he told them to do. While we can't prevent kings or executives from demanding more features and earlier "ship" dates, we have a responsibility to analyze the implications of their demands and educate them about risks.

Lesson #4: Publish test results, even the bad ones. Those present at the Vasa's heeling test did not speak of it again until the inquisition following her capsizing. Even then, only the outspoken Captain Hansson had the temerity to bring up the test. No one on the Vasa project team informed King Gustavus of the results of the heeling test before the ship sailed. I wonder if King Gustavus would have allowed the ship to sail if he'd known how unstable she was?

Lesson #5: We can't stop failure by ignoring risk. As I read the story of the Vasa, it seemed to me that the people on the project team could not admit to themselves that the ship might not be safe. Yet that unwillingness to admit the risks caused even greater loss—loss of life. Ships sink. Software fails. We can't stop failure through sheer force of will, much as we might like to.

Building the Vasa was a large and complex undertaking, full of risks and challenges. Each decision that contributed to the final disaster no doubt made perfect sense at the time in light of the king's demands and the political climate.

Ultimately, the story of the Vasa is a tale of human fallibility. The struggles we have with large software projects aren't new—they're extensions of the struggles people have had with complex, difficult projects involving new technologies through the centuries. It just happens that software is an ubiquitous new technology, touching every aspect of our lives. ■

So You're Going to Be an Expert Witness: How to Prepare for Depositions

by Nelson E. Canter, J.D.

Editor's Note:
This article previously appeared in the CPCU Society's CLEW Section quarterly newsletter, CLEWS, *May 2002 issue.*

The article originally appeared in the February 2002 issue of riskVue, *the free online magazine for risk professionals, and is reprinted here with the permission of the publisher. See the latest issue of* riskVue *at www.riskvue.com.*

Nelson E. Canter, J.D., *former assistant district attorney in Westchester County, New York, is the managing partner of the White Plains Office of the national law firm of Clausen Miller P.C. He is captain of his local fire department and has been an active firefighter for the past 22 years. Canter also is the New York State Delegate for the Attorney Advisory Committee for the International Association of Arson Investigators.*

At some point in your career it is possible that you will be asked to serve as an expert witness in the discovery phase of a lawsuit. Because the success or failure of a lawsuit can rest on subtle elements of the expert's testimony, the experience can be intimidating, grueling, and sometimes combative. Whether you are a first-time expert witness or an old hat, the following basic points about depositions and tips will help you be better prepared to serve as a truly expert witness.

Tip #1—Even if you have many years of experience and are the preeminent expert in your field, never underestimate the knowledge of the deposing attorney. A sharp, experienced and prepared deposing attorney will treat the expert's deposition as the tip of the iceberg. Working from the bottom up, the deposing attorney will have read expert materials (including your own) on the subject matter, reviewed pertinent reports, correspondence, and other documents, and will have digested his or her own expert's theories and anticipated your theories. Additionally, some attorneys may deliberately mispronounce certain "words of art" to lull you into a false sense of superiority. Therefore, tread carefully because the opposing parties' experts will most certainly read the transcript of your deposition.

Tip #2—Never hold yourself out to be an expert if you are not. This includes related fields that may be tangentially related to yours. For example, if you are an expert in insurance broker operations, do not hold yourself out as an expert in safety and loss-prevention matters if you lack the qualifications and technical background. Your training and experience will be examined carefully, and any shortfalls or exaggerations can have devastating consequences for the party who retained your services. Stick to your area of expertise, and do not hesitate to advise your client to retain additional experts to work in conjunction with you.

Tip #3—Just as real estate brokers say the three most important things in real estate are location, location, and location, the three most important things for experts are credibility, credibility, and credibility. If you fail to establish credibility, your effectiveness as an expert is very limited. Although everyone casts their professional qualifications and experience in the most favorable light possible, never exaggerate qualifications on your résumé. If you are truly an expert in your field, any exaggerations will only diminish your credibility before a jury.

Tip #4—Remember that an expert's theories and opinions are only as valid as the facts upon which they are based. Therefore, be especially prepared to identify every note, memorandum, statement, report, letter, photograph, transcribed conversation, and document you reviewed in rendering your opinion. Very often an expert will render an opinion at his or her deposition but fail to recall each of the items upon which he or she relied in rendering such opinion. Then at trial the expert will testify about certain facts upon which he or she relied in rendering his or her opinion, which he or she omitted from his or her deposition.

Although the opinions of an expert may be sound, if those opinions cannot be supported by identifiable, admissible evidence based upon facts developed in the case, the expert's theories may be rejected by the jury and even limited by the court.

Tip #5—Always answer the deposing attorney's questions directly and succinctly, and never volunteer information. Unless specifically asked, the expert should not feel obligated to educate the deposing attorney about the subject of the litigation. If the attorney neglects to ask certain questions about specific areas during the deposition, the expert is not precluded from later testifying about those areas. Find the balance between making the attorney work for each answer and providing lucid, direct, and thorough responses to his or her questions.

Tip #6—Prepare for your deposition by re-reading any relevant articles, books, and publications that you have authored as well as any deposition testimony given in other cases. Such information is frequently obtained by the deposing attorney prior to your deposition. There is probably nothing more effective than using an expert's authored publications and/or the expert's deposition testimony in other cases, to impeach his or her credibility.

Conclusion

The deposition of the expert is perhaps the true test of the strength or weakness of a case. Use these observations and tips in preparing for and testifying effectively at deposition. ■

From the Editor—
Call Out for Articles and Topics

I would like to invite you and your industry peers to submit previously unpublished articles related to personal lines to be considered for publication in *Personally Speaking*.

At the same time, I would invite you to send in any personal lines topics that you feel would be interesting to our readers. If your topic is selected, an expert writer will develop the article.

Finally, if you would like to co-author an article, please let me know. I can then introduce you to others, who can work with you to create an article on a topic of interest.

Please submit first drafts, topic suggestions, and/or interest in co-authoring before October 1, 2002. The next *Personally Speaking* will be published in November 2002, after the CPCU Society's 58th Annual Meeting and Seminars in Orlando, FL.

Thank you, and have a safe and fun summer! ■

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