CPCU SOCIETY INSURING YOUR SUCCESS

Reinsurance Interest Group

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Reinsurance Encounters

Editor's Comments

by Richard G. Waterman, CPCU, ARe

Richard G. Waterman, CPCU, ARe, is president of Northwest Reinsurance Inc., a Minnesota-based management consulting firm specializing in the fields of insurance, reinsurance and alternative dispute resolution. In addition to working with both ceding and assuming companies in his consulting practice, he has served as an arbitrator or umpire on more than 130 panels to resolve industry disputes as well as a neutral mediator, facilitator and fact-finder assisting parties to work out differences in a confidential setting. Waterman has been a member of the CPCU Society since 1978 and has served on the Reinsurance Interest Group Committee for more than 10 years.

Continuing our commitment to deliver valuable educational content, this edition of *Reinsurance Encounters* features three wide-ranging articles related to important issues facing the reinsurance industry. A brief description of each article is noted below. We hope you will enjoy reading the articles and will save them as a resource for future reference.

"Hydrofracking — What the Insurance and Reinsurance World Needs to Know" is the title of our lead article in this edition. The comprehensive and informative article was written by **Robert W. DiUbaldo, J.D.,** and **Gregory S. Hoffnagle, J.D.,** with the law firm Edwards Wildman Palmer LLP.

Hydraulic fracturing, also known as hydrofracking, or fracking, is an operation in which a specially blended liquid is pumped down a well and into a formation under pressure high enough to cause the formation to crack open, forming passages through which oil or gas can flow into the well bore. It is a high-tech method of extracting fossil fuels that can have devastating impacts on surrounding ecosystems. The practice has come under scrutiny due to the dangers of chemicals used in the procedure that has alarmed nearby residents, environmental groups and state officials. In their enlightening article, DiUbaldo and Hoffnagle explain the process, the environmental issues, and the potential underwriting risks for insurance and reinsurance companies.

In the third in a series of articles related to the allocation of continuous damage losses among policyholders, insurers and reinsurers, **Scott M. Seaman, J.D.,** and **Jason R. Schulze, J.D.,** partners with Meckler Bulger Tilson Marick & Pearson LLP, authored another informative and educational article, titled "Insurers Saddled with Disproportionate Share

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of Loss Seek Reallocation Through Contribution Claims and 'Other Insurance' Clauses." As the authors point out, for a variety of reasons an insurer may originally pay a disproportionate share of a loss. Pursuant to the "other insurance" clauses and the doctrine of equitable contribution, the insurer may be able to recover the amount paid in excess of its share from other insurers of the policyholder. The main allocation methodologies explained by Seaman and Schulze in their article have educational value to serve as resource for future reference.

An honorable engagement clause in a reinsurance agreement empowers arbitrators to depart from strict rules of law and contract construction in settling the meaning of the words in a reinsurance agreement. Consequently, parties to a reinsurance agreement with a typical honorable engagement clause should expect arbitrators to resolve disputes in a businesslike manner consistent with the custom and practice of the reinsurance industry and with a view to effect the general purpose of the reinsurance agreement. However, arbitrators' discretion to resolve disputes is not unlimited, as **Andrew S. Boris, J.D.,** a partner at Tressler, LLP, explains in his informative article, "The Honorable Engagement Clause and Support for the Arbitration Panel Award."

The "R. Michael Cass Remembrance" section contains collegial tributes in his memory. All of us on the Reinsurance Interest Group Committee will miss Mike Cass, who passed away on Sept. 29. We will miss his boundless enthusiasm, talents and dedication to the CPCU Society and truly valuable contributions to the Reinsurance Interest Group Committee. ■

2011–2012 Reinsurance Interest Group Committee

Message from a Co-Chair

by Charles "Chuck" W. Haake, CPCU, ARe

Charles "Chuck" W. Haake, CPCU, ARe, joined Transatlantic Reinsurance Company in 2006, as a vice president of product underwriting in Transatlantic's newly opened Overland Park, Kan., office. Previously, he spent 27 years with Employers Reinsurance Corporation, where he held a variety of positions within its home office and branch office network before being named vice president of property product for North America reporting to a worldwide property team in Munich, Germany. Prior to joining Employers Re, he served seven years with the property-casualty arm of Transamerica Insurance Group.

Where Are We Headed in 2012?

Now that the CPCU Society Annual Meeting and Seminars in Las Vegas is behind us all, we as members of the CPCU Society came away with a new organizational structure and renewed enthusiasm to participate in the Society's varied interest groups and educational experiences. Although I am biased and feel the Reinsurance Interest Group brings together some of the brightest and best informed professionals in the industry, we would urge all members of the Society to think how one can give back to an industry that is so vitally important to our world economy.

All of us have our own specific expertise when it comes to our role within the insurance industry, and the interest groups are set up within the Society to capture everyone who has an interest in any specific discipline within the industry. To this end, we in the Reinsurance Interest Group Committee are favored with two new members who joined us in Las Vegas and will bring their own set of ideas, energy and professional backgrounds as we shape our interest group going forward. **Terese Conn Peuvion, CPCU, ARe,** with Zurich's Assumed Reinsurance area, and **Steven J. Torres, CPCU,** of the firm Mintz Levin Cohn Ferris Glovsky & Popeo, have joined the Reinsurance Interest Group Committee. To each we say "welcome" as we look to them for new ideas, concepts and thoughts we can put into motion for 2012.

The Reinsurance Interest Group Committee has planned various seminars around the country. In this day of tight schedules and required higher productivity, everyone is invited to attend short, focused one-day seminars of outstanding value through its content. We will start in February, or early spring, with our reinsurance workshop in Chicago. That event will be followed by our Philadelphia Reinsurance Symposium, March 15, 2012, at the Union League of Philadelphia. Our theme for this event will be "Reinsurance — An Industry in Transition: Is 2012 the End of the World as We Know It?" Then in the fall, we will hold our third symposium in Dallas, home of the Society's president and chairman, **Steve McElhiney, CPCU, MBA, ARe, AIAF.** Steve has graciously offered the support of his staff to assist with this program over the years. We will conclude the year with our reinsurance seminar during the Annual Meeting and Seminars in Washington, D.C., scheduled for Sept. 8–11, 2012.

Future editions of *Reinsurance Encounters* will provide additional information on each of these events, as will the CPCU Society website and email transmissions advising the membership of these timely educational experiences.

Returning from the Las Vegas Annual Meeting and Seminars, many of us may have felt as if we have been sitting at the blackjack table this year with the insurance industry's combined loss ratio experience. From the earthquakes in Chile and New Zealand to even small shakes in Virginia and Oklahoma, the industry has been rattled. Flooding in various parts of the world, most recently Thailand, along with Japan's tsunami, made it seem as though any time we turned on the news we had another weather-related event affecting people's lives and the industry in which we work.

The Reinsurance Interest Group members have diverse backgrounds and experiences. They bring expertise to an industry that never stands still and is always evolving. Please contact either me at chaake@transre.com, or **Timothy D. Foy, CPCU,** at timothy.foy@xlgroup.com for further participation information. Tim and I are acting as co-chairs for the Reinsurance Interest Group during this new period, so both of us are available to assist you.

Come join us in the Reinsurance Interest Group and participate in working with other industry professionals to put forth stimulating, educational and timely symposia. Regardless of what role or responsibility you have in your own organization, you can be an asset to any one of the many interest groups.

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From left, Thomas M. Pavelko, CPCU, J.D., ARe, past chair of the CPCU Society Reinsurance Interest Group, receives an award from Warren L. Farrar, CPCU, CLU, ChFC, immediate past president and chairman of the Society, at the Volunteer Leaders Recognition Luncheon Oct. 22 in Las Vegas.

And finally, we would be remiss if we did not thank **Thomas M. Pavelko, CPCU, J.D., ARe,** for his outstanding leadership and commitment to the Reinsurance Interest Group over the past three years. Tom was tireless in pushing the interest group forward with new ideas and challenges, all the while taking care of all the small details behind the scene that many of us were not aware of. Tom always had a smile on his face as he went about the business of the Society. The Chicago-Northwest Suburban Chapter is fortunate to have someone like Tom Pavelko active within it. We feel honored to have had him lead our interest group the last three years, and we send our very best wishes to you, Tom, for your continued success. Do not forget us, Tom. We'll keep your phone number handy, as Tim and I will undoubtedly need your counsel and advice! ■

Premier Reinsurance Event Planned in Philly

The CPCU Society Reinsurance Interest Group and the CPCU Society will once again hold the premier reinsurance educational event of the year in Philadelphia on March 15, 2012.

Conducted by industry leaders, this year's symposium offers the theme "Reinsurance — An Industry in Transition: Is 2012 the End of the World as We Know It?" The meeting will provide new insights into and important discussions of the field's emerging issues.

CPCU Society President and Chairman **Steve McElhiney, CPCU, MBA, ARe, AIAF,** president of EWI Risk Services Inc. and Tall Pines Insurance Company, will deliver the keynote address. McElhiney's experience spans over two decades in both corporate finance and reinsurance markets.

As well as offering an outstanding educational opportunity, the symposium will give attendees a chance to reconnect with old friends and meet new ones. The symposium kicks off with a networking reception on March 14 from 5 to 6 p.m. at the Union League. ARe Conferment will be presented by The Institutes during a luncheon ceremony on March 15. Come welcome your new colleagues!

The historic Union League of Philadelphia will be the location for the March 2012 Reinsurance Interest Group Symposium.

Due to popular demand, the reinsurance symposium will again be held at the historical Union League. A special rate on overnight rooms at the Inn at the Union League is available for symposium attendees.

For more information and online registration, go to www.cpcusociety.org, click on "Professional Development," "Educational Events" and "Symposia." ■

Hydrofracking — What the Insurance and Reinsurance World Needs to Know

by Robert W. DiUbaldo, J.D., and Gregory S. Hoffnagle, J.D.

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Editor's note: An earlier version of this article was published in the September 2011 edition of Edwards Wildman Palmer's *Insurance and Reinsurance Preview,* and is reprinted with permission. This article is also scheduled to appear in the Winter issue of the *Journal of Reinsurance,* published by the Intermediaries and Reinsurance Underwriters Association.

Few topics have dominated our news cycle in recent months — if not years — as much our country's dependence on foreign oil. Not only is the cost of filling up at the pump a daily concern for most Americans, but our oil consumption has economic, environmental, national security and political implications that are the subject of heated debate.

Recently, however, a different source of energy has gained increased attention from politicians, media outlets and the general public — natural gas. Viewed by some as a clean, domestically-available alternative to oil or coal, the search for natural gas wells located throughout the United States has been characterized by some as the gold rush of the 21st century. Yet while natural gas has always been part of the alternative energy discussion, the risks associated with a relatively new process being employed by companies to extract the gas — hydraulic fracturing or hydrofracking — has caused some concern.

This article will discuss the basics of hydrofracking, why it is viewed by some as an attractive source of alternative energy, as well as the various risks and dangers that some allege are linked to this process. The article will then provide a broad overview of the potential issues that may arise for insurers and reinsurers that provide coverage for entities involved in hydrofracking operations. Although we are aware of only a few hydrofracking claims and lawsuits, there is no disputing the fact that insureds involved in this area face a variety of diverse risks.

Hydrofracking 101 — The What, Where & Why

Hydrofracking is a technique by which large amounts of water, sand and chemicals are injected into deep underground shale formations at extreme pressures — up to a maximum rate of 15,000 pounds per square inch (psi). The goal is to create fractures in the rock formations, which results in the release of natural gas trapped between the layers of shale.

Between one and eight million gallons of fluid, and eighty to three hundred tons of chemicals, may be used to frack a single well. The fluid consists mostly of sand and water, but the chemical combinations used as part of the fracking process — sometimes referred to as "fracking cocktails" — can consist of up to two hundred different types of chemicals, the specifics of which are sometimes not disclosed to the public (although several states have passed laws mandating some type of disclosure). Indeed, according to the Environmental Protection Agency ("EPA"), toxic chemicals used in hydrofracking include substances such as polycyclic aromatic hydrocarbons, methanol, formaldehyde, ethylene glycol, glycol ethers, hydrochloric acid, sodium hydroxide, and diesel fuel, which contains benzene, ethylbenzene, xylene, naphthalene and other chemicals. These chemicals have known negative health effects on the respiratory, neurological, central nervous and reproductive systems, and can cause cancer in some situations. Evaporators and condensate tanks are used to prevent the release of volatile organic compounds ("VOCs") into the atmosphere, which normally operate twenty-four hours a day, seven days a week.

One well may be fracked up to eighteen times, and a well can produce up to one hundred barrels of natural gas per minute. A significant percentage of the fluids used as part of the fracking process — anywhere between sixty to ninety

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percent — remain underground after the natural gas has been extracted. The remaining fluid is typically transported to a treatment facility in which certain procedures are employed to remove any toxic, radioactive or otherwise harmful chemicals from the fracking-fluid. That fluid is either used again as part of the fracking process, discharged into natural water sources, or disposed elsewhere (i.e., stored in deep underground wells).

There are currently about 495,000 known hydrofracking wells in the United States. About one-third of these wells are located in two states — Texas and Pennsylvania. One particular area of heightened exploration — named the Marcellus Shale Area — has been called the "Saudi Arabia of Natural Gas." It stretches from southwestern New York, through northwestern Pennsylvania, and into parts of West Virginia, Ohio, Maryland and Virginia, and is believed to contain enough natural gas to heat buildings, generate electricity and power vehicles for up to a hundred years. The EPA projects that by 2020, shale gas will comprise over 15–20% of the nation's gas supply.

The availability of natural gas is not the only reason, however, why the hydrofracking industry is a growing one. For one, the technology used as part of the fracking process has improved significantly in recent years, permitting the increased exploration (and related discovery) of shale gas reservoirs for each fracking well. Companies have developed techniques that some argue make hydrofracking safer than in the past. For example, drillers now install a series of protective steel ("casings") and cement layers that maintain the integrity of the well and protect the surrounding natural formations. In particular, in the upper part of the well, multiple layers of cement and steel casing are installed to create an impermeable barrier between the well and groundwater/aquifer zones. Drillers now also use casing deeper into the well to ensure its integrity and to isolate natural gas formations from the surrounding areas. In addition, most companies employ a series of engineers and technicians to continuously test and monitor each layer of casing and cement to ensure the integrity of the well and the quality of the protective casings.

A second reason for the increased focus on hydrofracking lies in the increasing prices for crude oil and natural gas imports. This has made hydrofracking — a relatively costly operation itself — a financially viable and attractive alternative for energy companies, particularly when combined with tax incentives for companies that develop alternative sources of energy and relaxed regulatory oversight.[1]

Moreover, there are significant environmental, political, and national security components to hydrofracking that have led to its growth in recent years. Some environmentalists support using natural gas as a means of slowing climate change, because it burns more cleanly than coal and oil. The Obama Administration has publicly set a goal of cutting all oil imports by one-third by 2025, which it seeks to accomplish in part by focusing on greater production and use of natural gas. And, of course, there is the continued instability in the Middle East, where we import the majority of our oil. By focusing our energy policy on the roughly 6600 trillion cubic feet of shale gas in the United States, some believe that we can significantly reduce our dependence on, and the associated need for military intervention in, Middle Eastern oil-producing countries.[2]

Last, hydrofracking has been an economic boon to certain areas of the country that are otherwise struggling. Hydrofracking operations create jobs. They also provide a source of tax revenue, benefit both local businesses and, in certain instances, even homeowners or farmers, who lease portions of their land to energy companies for drilling and exploration. As such, certain states have sought to position themselves as the "hydrofracking capital of the world," with the current frontrunner being Pennsylvania.

Hydrofracking Risks and the Related Insurance-Exposures

It has been alleged in several lawsuits[3] that hydrofracking has resulted in the contamination of the environment — specifically to the detriment of aquifers, surface waters and air quality. These lawsuits allege that individuals have sustained certain illnesses and injuries as a result of drinking water drawn from fresh-water aquifers contaminated by hydrofracking operations. Indeed, the EPA recently announced that it will be conducting a study of the impact of hydrofracking on drinking water. The study, which the EPA hopes to complete by 2014, will examine not only the hydrofracking process, but also the impact caused by the disposal of fracking fluid, surface spills, and well design.

Others have claimed that vibrations and subterranean pressure changes associated with hydrofracking have caused permanent damage to the underground and surface geology (i.e., surface subsidence) — and even seismic events such as earthquakes. A British energy firm, Cuadrilla Resources, recently concluded that its drilling most likely caused of a number of minor seismic events in northwest England, although Cuadrilla noted that such activity was likely unique to the geological factors that existed in that location, and would not occur at other well sites.

And still other potential risks include (1) pressure explosions (i.e., "blowouts"); (2) private property damage or devaluation; (3) migration of gases and naturally forming radioactive materials to the earth's surface; (4) loss of crops and livestock; and (5) accidents in the transportation, handling and storage of toxic chemicals and waste. These suits seek damages to compensate alleged bodily injuries and/or property damage, and, in certain instances, also seek to compel remediation of the conditions purportedly caused by hydrofracking.[4] At present, energy companies are the primary targets of these lawsuits, as well as the companies that sponsor or conduct hydrofracking operations.

The hydrofracking-related lawsuits have alleged the following causes of action: violation of certain federal and state environmental statutes (such as the Clean Water Act, Clean Air Act, and Comprehensive Environmental Response Compensation and Liability Act), various negligence-based theories, private/public nuisance, trespass to land and breach of contract/fraudulent misrepresentation (by certain landowners who leased portions of their property to companies involved in hydrofracking).[5]

Recently, New York Attorney General Eric Schneiderman also subpoenaed some of the largest companies in the country involved in natural gas drilling.[6] The subpoenas seek documents concerning the disclosures made by those companies to investors about the risks related to hydrofracking.

As more claims and lawsuits develop, companies involved in hydrofracking will undoubtedly look to their insurers to provide them with a defense, and ultimately seek indemnity for any resulting liabilities. And those insurers will, in turn, seek recovery from any applicable reinsurance coverage. While it is impossible at this point to predict with complete accuracy, and then analyze, all of the coverage issues that might arise as a result of hydrofracking claims, a brief list of the likely types of exposures and related insurance coverages are, as follows:

A. Environmental/Pollution Claims

It has been alleged in several cases that the toxic fluids, waste water, and chemicals involved in the hydrofracking process have polluted the water supply of certain municipalities and/or individuals.[7] Any bodily injury or property damage caused as a result of hydrofracking-related pollution or groundwater contamination could trigger coverage under an environmental/pollution liability policy, which typically provides defense and/or indemnity for bodily injury, property damage, and remediation costs resulting from a 'pollution' incident at a 'covered' site.

B. Claims Arising Under Comprehensive General Liability Coverage

Most commercial entities involved in hydrofracking will likely have Comprehensive General Liability ("CGL") insurance, which generally provides coverage for liability resulting from bodily injury or property damage that takes place during the policy period and is caused by an occurrence. Unless specifically excluded, CGL policies usually also provide coverage for losses associated with products, completed operations, premises and operations, and contractors.

As noted above, there have been allegations that the chemicals and waste water involved in the hydrofracking process have leaked into surrounding soil and sources of drinking water, causing bodily injury or property damage. On April 20, 2011, it was reported by several publications that a fracking eruption occurred in rural Pennsylvania, spilling chemically treated fluids into a creek and prompting the evacuation of nearby residents.[8] The creek flows into the Susquehanna River, which feeds a number of other bodies of water, including the Chesapeake Bay. The Maryland Attorney General's Office has already stated that it intends to file a lawsuit against the companies involved in the spill that seeks injunctive relief and civil penalties under the federal Resource Conservation and Recovery Act ("RCRA") and the Clean Water Act ("CW").[9] Accidents of this nature could potentially result in claims under the CGL coverage available to drillers, manufacturers, contractors, sub-contractors, and others involved in the fracking operation at a particular site.

Moreover, those entities involved in the storage, treatment, transportation and disposal of hydrofracking fluids face potential liability under their CGL policies (as well as other possible sources of coverage). It has been alleged by some that these entities do a less-than-adequate job of ensuring that fracking fluid, which may contain combinations of potentially toxic or radioactive chemicals, does not end up in our water supply or other areas where it can cause environmental or health problems.

C. Directors and Officers ("D&O") Liability Claims

D&O insurance provides financial protection for, among other things, the directors and officers of a company who are sued in connection with the performance of their duties for that company. One need not look any further than the Deepwater Horizon/BP spill

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— where derivative actions were brought against the directors and officers of the companies involved in that disaster — to see the potential exposure that directors and officers of an entity involved in the hydrofracking process could have if a similar type of catastrophe occurred.[10] Indeed, Cabot Oil and Gas ("Cabot"), a $4.2 billion publicly traded corporation that is deeply involved in hydrofracking in Pennsylvania, and who has already been named in several groundwater contamination lawsuits, could potentially face shareholder derivative lawsuits as a result of those litigations and related losses.[11] Further, one media outlet recently predicted that executives of natural gas companies could face risks arising from forecasts provided to investors concerning the productivity of hydrofracking wells, or statements regarding the size of their natural gas reserves.[12] Directors and officers of companies involved in hydrofracking might look to their D&O coverage to provide defense and indemnity with respect to any alleged errors, omissions, or misstatements associated with their business decisions and activities.

D. Workers Compensation Claims

Commercial Workers Compensation liability policies generally provide coverage for losses due to injury or death of the insureds' employees, including medical and rehabilitation costs and lost wages. Given the potentially volatile nature of hydrofracking operations — sand, water and toxic chemicals injected thousands of feet below the subsurface at extreme pressures — and the various entities involved in the process (drillers, contractors, sub-contractors, engineers), there is certainly a chance this type of coverage will be implicated by future claims.

E. Operators' Extra Expense Claims

Operators' Extra Expense (Control of Well) liability coverage often provides insurance for losses incurred when regaining control of an offshore or onshore well blowout, including re-drilling expenses, costs for seepage and pollution emanating from the blowout, damage to and loss of third-party property, and other related liabilities. Hydrofracking wells have occasionally suffered blowouts as a result of the large amounts and highly pressurized water, "proppants" (sand or ceramic beads) and chemicals that are injected into underground shale formations. Should a blowout occur — similar to the incident in Pennsylvania discussed above in section (B) — many of the energy and drilling companies could look to this type of insurance to cover their losses.

Potential Insurance and Reinsurance Issues

Although hydrofracking claims have been presented to insurers and reinsurers, we are not aware of any hydrofracking-related coverage disputes that have resulted in a court decision. Nonetheless, given the potential risks associated with hydrofracking, it is likely that the insurance and reinsurance issues that will originate from such claims are similar to those the industry has seen with respect to (a) asbestos, pollution, toxic tort and other types of long-tail claims and/or (b) catastrophic incidents (i.e., the Deepwater Horizon/BP spill).

For example, several of the lawsuits discussed above allege that the chemicals, sand and water used as part of the fracking process contaminate surrounding water supplies, soil and even our air quality. It is not difficult to imagine a lawsuit that alleges that certain individuals suffered injuries (or owned property that was damaged) due to the prolonged exposure to the allegedly contaminated water, soil or air. These circumstances would likely implicate many (if not all) of the primary (and possibly excess) insurance policies that provided coverage to the insureds involved in operations at the subject well, and raise a host of traditional insurance coverage issues, such as trigger, exhaustion, and allocation of liability. Not only would the resolution of these issues be driven by the facts of a given claim and the relevant policy language, but also the law of the jurisdiction(s) that applied.

Likewise, an incident such as a blowout at a hydrofracking well, or a large-scale

fracking spill, could result in a coverage dispute as to whether or not any related claims can be aggregated as a single occurrence or event under any applicable insurance policy (or reinsurance contract), or whether those claims constitute multiple occurrences/events. Given that the limits and any retention/deductible of an insurance policy or reinsurance contract are often linked to the number of occurrences, this could be a potentially significant issue, as it has been for other long-tail or catastrophic claims.

Hydrofracking wells have occasionally suffered blowouts as a result of the large amounts and highly pressurized water, "proppants" (sand or ceramic beads) and chemicals that are injected into underground shale formations.

Moreover, because hydrofracking involves the use of certain combinations of toxic or potentially harmful chemicals, it is plausible that insureds and insurers will ultimately litigate the viability of the "pollution exclusion" found in many CGL policies, as well as similar types of exclusions. The pollution exclusion typically states that there is no coverage for "bodily injury" or "property damage" that would not have occurred in whole or in part but for the actual or alleged "discharge, dispersal, seepage, migration, release or escape" of "pollutants," which is then defined in the policy. The interpretation and enforceability of this exclusion may differ depending upon the governing law, how the term "pollutant" is defined, and what fracking chemicals are alleged to be involved in the incident in question.

Other potential issues that arise commonly in disputes related to long-tail or catastrophic claims are a party's failure to comply with a policy's, treaty's or facultative certificate's notice of claim requirement, the availability of inuring or other applicable insurance for a loss, the implication of clash coverage (with respect to reinsurance contract's only), and the various types of disputes that involve the scope of the follow the fortunes or settlements doctrine.

Conclusion

Hydrofracking is clearly an area of potential growth for insureds involved in the energy industry, and thus of interest to insurers and reinsurers who underwrite that business. But associated with hydrofracking are a variety of potential risks, liabilities and exposures that members of the insurance and reinsurance community should be aware of. ■

Endnotes

(1) Indeed, as discussed in the Oscar-nominated documentary "Gasland," hydrofracking is not only exempt from regulation under the Safe Drinking Water Act ("SWDA"), but companies are not required to disclose to any regulatory body (or the general public) the contents of the "fracking cocktails" used as part of the process.

(2) *The New York Times* reported on June 30 that Governor Andrew Cuomo's administration would seek to lift a moratorium in New York State on hydraulic fracturing. See Danny Hakim and Nicholas Confessore, Cuomo Will Seek to Lift Ban on Hydraulic Fracturing, *The New York Times,* June 30, 2011.

(3) See, e.g., *Fiorentino, et al. v. Cabot Oil & Gas Corp., et al.,* No. 09-CV-2284 (M.D. Pa.); *Berish v. Southwestern Energy Production Co.,* No. 3:10-cv-1981 (M.D. Pa.); *Baker, et al. v. Anschutz Exploration Corp., et al.,* No. 6:11-CV-061190 (W.D\ N.Y.) (as examples).

(4) Id.

(5) Id.

(6) See Celeste Katz, Hydrofracking Subpoenas on Tap, *New York Daily News,* June 28, 2011.

(7) Id.

(8) See Mike Lee, Chesapeake Battles Out-of-Control Marcellus Gas Well, Bloomberg (April 20, 2011).

(9) See http://www.oag.state.md.us/Press/2011/050211.html.

(10) See Huhnsik Chung and Gregory Hoffnagle, The BP Disaster: The Flood of Oil has Stopped, Insurance Claims have Just Begun, *Bloomberg Law Reports* (2010).

(11) See Fiorentino, supra.

(12) See Ian Urbina, Insiders Sound an Alarm Amid a Natural Gas Rush, *The New York Times,* June 25, 2011.

Insurers Saddled with Disproportionate Share of Loss Seek Reallocation Through Contribution Claims and 'Other Insurance' Clauses

by Scott M. Seaman, J.D., and Jason R. Schulze, J.D.

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In the March 2011 issue of *Reinsurance Encounters*, we provided a primer on the main allocation methodologies: the "all sums" approach and various "pro rata" allocation approaches. The focus on that discussion concerned how losses (i.e., indemnity and defense costs) are allocated between a policyholder and its various insurers. A related (but distinct) issue is when, and under what circumstances, an insurer that has paid a disproportionate share of a loss is permitted to recover those amounts paid in excess of its share from other insurers of that policyholder.

An insurer may have originally paid a disproportionate share of a loss for a variety of reasons: (1) other insurers have not been notified of the loss or tender was not made to them, (2) other insurers have not agreed to provide coverage, (3) all insurers have not been joined in a coverage action or (4) the court imposes "joint and several liability." Regardless of the circumstances, the insurer that has paid a disproportionate share of the policyholder's loss may in some circumstances seek to recover from other insurers, usually pursuant to the "other insurance" clauses in the potentially implicated contracts and equitable contribution claims.

The Right To Reallocate: Equitable Contribution and 'Other Insurance' Clauses

Depending upon the jurisdiction and circumstances, the legal theory for reallocation may be contribution, indemnification or subrogation. Although the insurers have no contractual relationship with each other and, strictly speaking, the insurers may not be "subrogees," courts generally permit reallocation based upon equitable contribution. Indeed, the doctrine of equitable contribution is recognized in the majority of states and provides that an insurer paying more than its fair share of a loss has the right to seek contribution from other insurers whose policies also are impacted.

Equitable contribution applies to insurers that share the same type of obligation on the same risk with respect to the same insured. The doctrine is based on principles of equity, not contract. Equity requires that, where multiple insurers share contractual liability for the loss, the selection of which insurer is to bear the loss should not be left to the arbitrary choice of the policyholder. Nor should an insurer be incentivized to avoid defending or paying a valid claim based upon another insurer honoring its obligation.

Courts consider many different factors and apply different standards in the evaluation of equitable contribution. Some courts consider the policy limits and/or the insurer's relative time on the risk. Though based on equity (not the contracts themselves), many courts nevertheless focus on the "other insurance" clauses of the respective insurance contracts.

"Other insurance" clauses do not create a right to recovery as against other insurers. Rather, they lessen what the insurer owes to the policyholder. Such clauses serve to prevent the policyholder from obtaining multiple recoveries as well as to distribute the loss among insurers. "Other insurance" clauses come into play in the context of concurrent insurance coverage. Concurrent coverage may come about by design or coincidence through the purchase of overlapping policies.

"Other insurance" clauses are also implicated in the case of progressive injury, continuous damage or long-tail claims. Although the insurance contracts in such cases actually may be successive rather than concurrent, they are, in

effect, rendered concurrent by those courts adopting the "joint and several liability" approach.

A minority of states has not allowed equitable contribution or has placed significant limitation on it. Even where contribution is permitted, an insurer that has been selected by the policyholder under an "all sums" allocation approach may end up paying more than its "pro rata" share of liability. This can be the case, for instance, where insurers against whom contribution claims otherwise would be asserted are insolvent. Also, the other insurers may have substantive defenses to contribution claims. Depending upon the nature of the defense and the facts, the prospect of an insurer having to take pro-policyholder positions in prosecuting a contribution claim may be factors that a selected insurer takes into account in considering whether or not to prosecute a contribution claim in addition to the costs of prosecution.

Types of "Other Insurance" Clauses

There are several types of "other insurance" clauses that appear in insurance contracts. These clauses include: (1) "pro rata" clauses, (2) excess clauses, (3) escape clauses and (4) "tailor-made" clauses. A description of these clauses and how they operate is set forth below.

"Pro rata" clauses: "Pro rata" clauses typically provide that, if other insurance exists, each insurer will pay its "pro rata" share of the loss. "Pro rata" clauses generally include language to the following effect:

> If the insured has other insurance against liability or loss covered by this policy, the company shall not be liable for a greater proportion of such liability or loss than the applicable limit of liability bears to the total applicable limit of liability of all collectible insurance against such liability or loss.

Where the "other insurance" clauses of the impacted contracts are not mutually repugnant, the provisions simply are applied. Where they provide for irreconcilable methods of apportionment (i.e., where they conflict), courts have employed two approaches for determining the "pro rata" share of each insurer: (1) contribution by equal share and (2) contribution by contract limits. Under the "equal shares" approach, each insurer matches dollar-for-dollar payments up to the limits of the contract containing the lowest dollar limit. Any remaining portion of the loss then is paid from the contract with the largest limits up to the limits of that contract. Under the "contract limits" method, the loss is prorated according to the ratio of the limits of liability provided by each contract for the particular loss to the total limits of liability provided by all contracts.

Although most states apply the "contract limits" method, some decisions apply an "equal shares" approach. There may be a significant difference in the amount an insurer would have to contribute under the "equal shares" method as compared to its contribution under the "contract limits" method. For example, assume that three insurers must respond to a $600,000 loss and that the limits of each insurer's contract are as follows:

Insurer A	$100,000
Insurer B	$500,000
Insurer C	$750,000

Using the "equal shares" method, the $600,000 loss would be shared as follows:

Insurer A	$100,000	(limits)	$100,000
Insurer B	$100,000	+$150,000	$250,000
Insurer C	$100,000	+$150,000	$250,000
			$600,000

Using the "contract limits" method, there is $1,350,000 in limits available and the $600,000 loss would be shared as follows:

Insurer A	$100,000/ 1,350,000 7.5% of $600,000 =	$45,000
Insurer B	$500,000/ 1,350,000 37.0% of $600,000 =	$222,000
Insurer C	$750,000/ 1,350,000 55.5% of $600,000 =	$333,000
		$600,000

As the foregoing example shows, the insurer with the lowest contract limits benefits where the "contract limits" method is utilized. On the other hand, the insurer with the highest contract limits is at an advantage under the "equal shares" method as it forces other insurers with lower contract limits to pay those full limits, thereby reducing the ultimate share allocable to the insurer with the highest contract limits.

Continued on page 12

Insurers Saddled with Disproportionate Share of Loss Seek Reallocation Through Contribution Claims and 'Other Insurance' Clauses

Continued from page 11

Arguments can be advanced in support of each approach. Advocates of the "equal shares" approach argue that, because each insurer has equally agreed to insure against a loss for a premium, each insurer should share the loss equally up to the limits of its contract. On the other hand, advocates of the "contract limits" approach argue that insurers with higher contract limits should not be entitled to a windfall from other insurers with lower contract limits.

Excess clauses: Excess "other insurance" clauses provide that an insurer's liability is limited to the amount of the loss, if any, that exceeds the coverage provided by all other valid and collectible insurance, up to the limits of the contract with the excess clause. An example of a typical excess clause is set forth below:

> This insurance shall apply only as excess insurance over any other valid and collectible insurance which would apply in the absence of this policy, except insurance written specifically to cover as excess over the limits of liability applicable to … this policy.

Escape clauses: Unlike "pro rata" and excess clauses, escape clauses seek to avoid all liability rather than simply to limit it. If there is "other insurance" available, the application of an escape clause extinguishes the insurer's liability to the extent of that other insurance. There are three basic types of escape clauses: (1) simple escape clauses, (2) super escape clauses and (3) excess escape clauses.

A simple escape clause typically provides:

> If any Insured included in this insurance is covered by other valid and collectible insurance against a claim also covered by this Policy, the insured shall not be entitled to protection under this Policy.

As compared to a simple escape clause, a super escape clause is broader and all-inclusive. A super escape clause may provide:

> This insurance does not apply … to any liability for such loss as is covered on a primary, contributory, excess or any other basis by insurance in another insurance company.

Excess escape clauses provide that the insurer is liable for the amount of the loss that exceeds the limits of other available insurance, but the insurer is not liable where the limits of the other available insurance equal or exceed its own. An example of such a clause provides:

> If other valid insurance exists protecting the insured from liability for such bodily injury … this policy shall be null and void with respect to such specific hazard otherwise covered, whether the insured is specifically named in such other policy or not; provided, however, that if the applicable limit of liability of this policy exceeds the applicable limit of liability of such other valid insurance, then this policy shall apply as excess insurance against such hazard in an amount equal to the applicable limit of liability of this policy minus the applicable limit of liability of such other valid insurance.

Advocates of the "equal shares" approach argue that, because each insurer has equally agreed to insure against a loss for a premium, each insurer should share the loss equally up to the limits of its contract.

"Tailor-made" clauses: "Tailor-made" clauses are hybrid forms of "other insurance" clauses that do not fit neatly within the above classification. It is not unusual for "tailor-made" clauses to be a combination of "pro rata," excess and escape clauses. Although such "tailor-made" clauses may suit the objectives of the immediate contracting parties, they may often clash with the "other insurance" clauses in other contracts that provide concurrent coverage. In such situations, a "tailor-made" clause may not be enforced as written.

Resolving Conflicts in "Other Insurance" Clauses

As might be expected, there is no guaranty that any set of insurers that may have an equal obligation to an insured will have compatible "other insurance" clauses in their contracts. To the contrary, conflicts regarding "other insurance" clauses frequently spawn litigation between and among insurers. As the Supreme Court of South Carolina aptly opined on this issue:

> This is an area in which hair splitting and nit picking has been elevated to an art form. "Other insurance" clauses have been variously described as: "the catacombs of insurance policy English, a dimly lit underworld where many have lost their way," a circular riddle, and "polic[ies] which cross one's eyes and boggle one's mind."

South Carolina Ins. Co. v. Fidelity & Guar. Ins. Underwriters, Inc., 327 S.C. 207, 489 S.E.2d 200 (1997) (citing *Ins. Co. of North America v. Home & auto Ins. Co.*, 256 Ill.App.3d 801, 195 Ill. Dec. 179, 628 N.E.2d 643 (1st Dist. 1993).

Courts addressing conflicting "other insurance" clauses have formulated certain tests to resolve the conflicts. Resolution of these conflicts depends upon whether there are "other insurance" clauses in all, some or none of the contracts; whether the "other insurance" clauses are similar or dissimilar and whether there are conflicting "other insurance" clauses in excess insurance contracts. Although the resolution of such conflicts depends upon the facts of the loss, the specifics of the contract

language, and the jurisdiction, certain patterns have developed regarding the resolution of conflicting "other insurance" clauses. These patterns are reflected in the chart shown to the right:

A minority of courts disregard this type of analysis and simply hold that all types of "other insurance" clauses are mutually repugnant rather than attempting to reconcile conflicting "other insurance" clauses. Several other courts have criticized this approach because it ignores the intent of the contracting parties and flatly disregards the contract language. Yet other courts have rejected a strict analysis of the "other insurance" clauses in favor of examining the intent of the parties. According to this approach, the "total contract insuring intent" of the parties always should remain the central issue in apportioning liabilities among multiple insurers in "other insurance" situations.

Finally, still other courts employ an analysis that focuses on the "closeness to the risk" analysis to determine the priority of coverage when "other insurance" clauses conflict. *Interstate Fire & Cas. Co. v. Auto-Owners Ins. Co.*, 433 N.W.2d 82 (Minn. 1988). According to this approach, the coverage contemplated by the contracts and the premiums paid for them should be the primary considerations in resolving "other insurance" issues. In determining which contract is closer to the risk, courts consider which contract more specifically describes the accident-causing instrumentality or contemplates the risk as reflected by the contract language and premium charged.

As these various approaches demonstrate, reconciling "other insurance" clauses is a difficult and unpredictable exercise that involves a myriad of factors depending upon the contract language, the particular claim facts, and the jurisdiction where the dispute is or may be ultimately litigated. ■

First Primary Policy	**Second Primary Policy**	**Priority of Payment**
No Clause	No Clause	Preparation by contract limits or equal shares
No Clause	"Pro Rata"	Attempt to read two contracts together-proration by contract limits or equal shares
"Pro Rata"	"Pro Rata"	Proration by contract limits or equal shares
Excess	Excess	Clauses mutually repugnant-proration by contract limits or equal shares
Escape	Escape	Clauses mutually repugnant-proration by contract limits or equal shares
"Pro Rata"	Excess	"Pro rata" acts as primary, excess acts as excess
"Pro Rata"	Escape	"Pro rata" acts as primary
Excess	Escape	Majority: Escape acts as primary, excess acts as excess Minority: Proration by contract limits or equal shares
Excess	Super Escape	Majority: Excess acts as primary Minority: Super escape acts as primary or proration
Excess	Excess Escape	Excess acts as primary

The Honorable Engagement Clause and Support for the Arbitration Panel Award

by Andrew S. Boris, J.D.

Andrew S. Boris, J.D., is a partner in the Chicago office of Tressler LLP. His practice is focused on litigation and arbitration of insurance coverage and reinsurance matters throughout the country, including general coverage, professional liability, environmental and asbestos cases. Questions and responses to this article are welcome at aboris@tresslerllp.com.

One can imagine the far-ranging discussions during the placement of the reinsurance contract, addressing the inclusion of numerous contract terms and provisions. During the discussions, representatives of one of the parties inquire as to why an "honorable engagement" clause is needed. The response is straight-forward — it is pretty customary to include it, and should there be the future need for an arbitration to address a dispute, the inclusion of the provision will make the entire arbitration process smoother. Of course, the conversations conclude on the topic with assurances that neither party can see any problems making their way into arbitration and a quick decision to include the honorable engagement provision.

No one can guess that, decades later, a court might rely upon the honorable engagement clause in deciding to confirm an arbitration award that arguably adds a new provision into the reinsurance contract. We have no idea whether the conversation referenced above actually took place, but a recent case illustrates how broadly an honorable engagement clause can be interpreted and how courts can rely upon such provisions to support the decisions issued by an arbitration panel. See *Harper Insurance Ltd. v. Century Indemnity Co.*, Case No. 10 Civ. 7866 (USDC S.D.N.Y. July 28, 2011).

In *Harper,* a dispute developed between a group of reinsurers and a reinsured regarding the reinsurers' alleged obligation to indemnify the reinsured for underlying asbestos claims. The reinsurance contract in question did not include a reports and remittances clause dictating when claims had to be indemnified by the reinsurers. However, the contract did include an arbitration clause with a direction that the arbitrators should interpret the agreement as an honorable engagement and to make their award with a view to affecting the general purpose of the agreement in a reasonable manner, rather than in accordance with a literal interpretation of the language. In order to address the disputes concerning the reinsurers' potential obligations to indemnify the reinsured for the asbestos billings, numerous arbitration panels were formed. At issue in the subsequent federal court case was an interim order from one of the arbitration panels that directed the reinsurers within 106 days after receipt of a billing: (1) to pay the undisputed portion of a billing; and (2) to pay 75 percent of the disputed portion of a billing and provide a description of any objections for the disputed portion of a billing.

In connection with the issuance of the interim order concerning the newly designed pre-payment provision, the arbitration panel retained jurisdiction over any disputes concerning the operation of the provision. Approximately three and a half years after the issuance of the interim order, the panel requested the parties' views as to whether the arbitration panel should keep jurisdiction of the matter. (The panel was not called upon to address any disputes relating to the operation of its interim order after it was issued.) The parties agreed that the panel could terminate jurisdiction, but they disagreed as to whether the interim order regarding payment of disputed billings should be converted into a permanent order. The arbitrators ultimately terminated their jurisdiction, but incorporated the interim order into a final award. The reinsurers subsequently challenged the authority of the arbitrators to issue the pre-payment order and sought to vacate the award in the United States District Court in the Southern District of New York.

In court, the reinsurers raised two principal challenges to the arbitrator's award. First, they contended that the arbitration panel ordered relief that neither party requested, and therefore, the panel did not rule on an issue that the parties agreed to submit to arbitration.

While the court specifically noted that it is undisputed that arbitrators have no authority to rule on an issue not submitted to them, the court stated there is no rule that it is beyond the authority of the arbitrators to issue a remedy concerning an issue squarely before them. Thus, the court found the issue of whether the reinsurers were obligated to pay for asbestos claims was properly before the arbitration panel, so the arbitrators had the authority to fashion relief to address the problem.

In arriving at its decision, the court relied upon the presence of the honorable engagement clause to support the conclusion that the arbitrators had authority to craft the identified remedy. Second, the reinsurers challenged the award on the basis that the arbitrators exceeded their powers by materially altering the reinsurance contract at issue by including the newly designed pre-payment provision. Again, the federal district court looked to the honorable engagement clause for support that the parties did not want their disputes determined via a literal interpretation of the contract language, but rather for the arbitrators to find a general purpose of the parties' understanding. In ruling against the reinsurers' position, the court further found that the pre-payment provision did not violate any explicit provisions of the contract and the provision supported an implied expectation that claims would be paid promptly.

Of interest, the federal district court pointed out that the reinsurers were concerned that the court's decision was going to be widely read throughout the industry and would guide both arbitrators and practitioners regarding the future scope of an arbitration panel's jurisdiction. The court stated that it was the reinsurers' decision to pursue the instant case in federal court (and beyond the confidentiality protections provided by the arbitration process), so any far-reaching consequences resulting from the court's decision originated with the reinsurers' approach to handling the dispute. Having rejected the reinsurer's arguments, the court confirmed the award in the reinsured's favor.

In short, the case provides guidance on two larger points. First, courts will assume that language in a contract has a purpose and will not look past it. Thus, decisions about what language to include in a contract should not be dismissed without giving thought to potential ramifications down the road (to be fair, the court's decision in this case comes more than 40 years after issuance of the contracts). Second, this case also gives insight into how (at least) one court used the presence of an honorable engagement provision to grant an arbitration panel significant latitude in drafting a remedy to an issue properly presented to the panel. ■

R. Michael Cass Remembrance

It is with sadness that we remember our friend and colleague, **R. Michael Cass, CPCU, J.D., ARe, ARM,** who passed away suddenly on Sept. 29, 2011, en route to a business meeting in New York.

Mike was a strong supporter of CPCU activities for many years and served as past chairman of the Reinsurance Interest Group. It was my privilege to be associated with Mike as part of the Reinsurance Interest Group as well as other industry organizations. He gave so generously of his time and talents in demonstrating his industry knowledge and leadership skills. His hard work, dedication and exceptional service to the CPCU Society will be greatly missed.

Richard G. Waterman, CPCU, ARe

Many people know of Mike Cass's role with the Reinsurance Interest Group and the leadership he gave to the group and the CPCU Society. What you may have not known was the role that Mike played in the development and revision of the Associate in Reinsurance (ARe) curriculum. Mike served as a reviewer of the 1990 textbooks, *Principles of Reinsurance* and *Reinsurance Practices*. He served as a co-author on the first major revision of the *Reinsurance Principles* content in 1997. It's not uncommon for Society members to be active out front, but Mike worked behind the scenes for the betterment of our business, as well. Mike joined the ARe Advisory Committee a few years ago, and his advice and counsel was relied on in the development of content and assessments.

What's more, Mike Cass was a "Friend of The Institutes" and our friend. Mike Elliott directed the work on the first and second editions of the ARe textbooks, and he shares, "I remember Mike as someone who was always ready to assist with the Associate in Reinsurance program content, even though he was busy with his consulting practice. Mike was a true professional in every sense of the word and cared deeply about The Institutes, the Society and his profession."

R. Michael Cass, CPCU, J.D., ARe, ARM

Connor Harrison directed the third revision of the ARe content, and he offered the following thoughts: "Mike Cass was the Reinsurance Interest Group Committee Chair when The Institutes significantly reconfigured the ARe program. These were contentious changes, and Mike helped guide the process. His leadership mattered."

Susan J. Kearney, CPCU, AAI, ARM, AU, heads The Institutes' reinsurance effort today, and she offered these words: "Mike was always ready to assist with the Associate in Reinsurance program content, as well as our reinsurance content in other programs. CPCU 520–Insurance Operations was recently revised, as was the Associate in Commercial Underwriting, and Mike took a role in ensuring that our content was on target for these audiences."

Mike Cass joins a short list — **Edward W. Fry Jr., CPCU, ARe,** and **George M. Gottheimer, CPCU, Ph.D., CLU, ARe** — whose service to reinsurance education is remembered and celebrated.

Michael W. Elliott, CPCU, ARe, and Connor M. Harrison, CPCU, ARe

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I will remember Mike as a Reinsurance Interest Group Committee colleague and a friend. Mike was chairman of the committee just before me, and his shoes were difficult to fill, to say the least. But he was most gracious and generous with his time and always went out of his way to help.

Mike was a very "low-key" type of guy, and his calming influence and steady leadership was just what was needed during the very trying times during the revising of the ARe curriculum several years ago. And he was certainly one of the "go-to guys" when things got hectic.

Mike was an established member of our committee when I joined, and we quickly became friends — a friendship I will always remember and treasure. I will certainly miss him, and I mourn his passing, as he has left us much, much too soon and too suddenly. But my sorrow is tempered by the knowledge and deep gratitude that I am a far better reinsurance professional, not to mention a far richer person, because Mike Cass touched my life.

Rest in peace, my friend. You are truly missed!

Rick Blaum, CPCU, ARe

I had the privilege of working with Mike, a consummate professional, while on the CPCU Reinsurance Interest Group board. His professional input in putting together the Chicago Reinsurance Symposium was truly invaluable. I tip my hat to you, Mike, in honor. You will be missed.

Eric F. Hubicki, CPCU, ARe, AU, ARM, AFIS

There are many reasons for me to respectfully remember Mike Cass. At the top of my list was his ongoing support of my *Reinsurance Encounters* editing contributions, especially when he could have sided with the Society's mandate. Mike's often demonstrated ability to encourage reinsurance section activities was always a treat to behold. Yes, we will miss him greatly.

Bruce Evans, CPCU, MBA, ARe, ARM

I can't really remember when I first met Mike, but it was probably when we both served on the reinsurance section committee "back in the day." During a dinner with Mike and Judy a couple of years ago, it turned out that Mike and my wife, Mary, were at Penn State at about the same time, although they did not know each other. In any event, it seems like Mike and I had been brothers of the reinsurance cloth forever, and he has clearly left us much too soon.

In my view, there was no finer reinsurance professional than Mike Cass. Although low-key in personality, Mike commanded much respect in the industry, and one of my true regrets is never having served with Mike on an arbitration panel, although we came close once or twice.

Mike was the true embodiment of the values extolled by the CPCU Society, and will be sorely missed as the consummate professional and a dear friend.

Paul Walther, CPCU, ARe

I first met Mike Cass shortly after joining the reinsurance section committee. Mike was one of those people that you took an instant liking to. While he initially came across as being quiet and somewhat reserved, I soon discovered that he had a lot of great ideas about how the section could grow and prosper. During my time as chair of the committee, I reached out to Mike frequently for guidance and assistance. He was always willing to help and certainly made my time as chair a lot easier. Mike succeeded me as chair and had a very successful tenure in that role.

I know that Mike did a great deal of reinsurance arbitration work and was highly regarded and respected within that field. Given his intellect and temperament, I often thought that he would have made an outstanding judge. His passing came much too early in life, but I consider myself to have been fortunate to have been a colleague and friend.

Gordon J. Lahti, CPCU, ARe

2011 CPCU Society Student Program — 'Ongoing Success'!

by Lamont D. Boyd, CPCU, AIM

Lamont D. Boyd, CPCU, AIM, director, insurance scoring solutions, with FICO® (Fair Isaac Corporation), is responsible for client and partnership opportunities that make use of FICO's credit-based insurance scoring and property risk scoring products and services. Speaking regularly to various groups on behalf of FICO for the past 18 years, he is recognized as a leading expert in predictive scoring technology. In addition to managing the CPCU Society Student Program, he is a member of the Underwriting Interest Group Committee and the 2012 Annual Meeting Task Force.

Dozens of notes from chapter and Society leaders, risk management/insurance students and professors, mentors and others involved in our CPCU Society Student Program for 2011 inspired me to express my own sincere appreciation for all who contributed time, effort and money to make this program another in a series of "ongoing successes"!

Here are just a few of the comments we've received about the 2011 Student Program:

Tyler Cockrum, Missouri State University, expressed appreciation very similar to so many others:

"I would like to begin by saying how grateful I am that I had the opportunity to participate in the CPCU Student Program. The Annual Meeting was a very successful trip for me. I had the opportunity to learn about several different career paths (the majority of which I had not even considered). I also was given countless opportunities to meet new people, and network with both students and professionals in the industry. This experience is something that has had a positive impact on me and will greatly help to advance me in my future career."

Brigid Tarpey, University of Southern Maine, shared her thoughts and plans for the future:

"I just wanted to thank you for all you did to make the conference as successful and meaningful to me as you did. I can't imagine all the hard work and organization that goes into setting up something like this, and I want to thank you for making it possible for my fellow classmates and me to have attended such a fantastic conference. We all benefited greatly from attending and enjoyed all the networking we did. I look forward to graduating in the spring, and furthering my education and career in the insurance field."

Erika Villavicencio, University of North Texas, offered insight into her CPCU study plans:

"I just wanted to tell you how much I appreciated your time throughout this whole process and for getting the Student Program to be so successful. It was a great experience for me, and I fully enjoyed my time with the rest of the CPCU members. The whole week there made me excited to start my journey with CPCU and start studying for the exams. I'm hoping to get everything done by 2016!"

Le'Yante Williams, Florida State University, also expressed her appreciation:

"I would really like to thank you for extending the opportunity to attend the CPCU Society Annual Meeting. I had a fantastic time learning about the industry, listening to the fascinating stories of the speakers, and also being able to not only network with professionals, but make some friends along the way. I will definitely relay the awesome experience I had at the meeting to help increase awareness of the outstanding possibilities the meeting had to offer."

Steve McElhiney, CPCU, MBA, ARe, AIAF, 2011–2012 CPCU Society president and chairman, shared his thoughts for the future:

"The pipeline issue is the core strategic challenge faced by the insurance industry and the Society in the next 10 to 15 years as a generation of knowledge workers retire, and new talent needs to be identified, trained and developed to fill these technical roles. This program, going now into its third year, serves as a prototype for success for the industry as bright and eager insurance students from programs based around the country gain an opportunity to be immersed into a vibrant CPCU Society Annual Meeting and Seminars, and network with professionals at all levels and discover various career options. At this point, I cannot imagine an Annual Meeting and Seminars where students are not present as an integral part of the meeting experience for all of us — this program has had this profound of an impact in such a short period."

Warren L. Farrar, CPCU, CLU, ChFC, 2011–2012 CPCU Society immediate past president and chairman, offered the following observations:

"I continue to be impressed with the level of excitement and commitment demonstrated by the students attending our annual event. They, too, benefit by gaining insight into our industry, having the opportunity to meet with

leaders of the industry and developing new relationships that can enhance their careers as they develop. This is a small, but important, effort at attracting young professionals into our industry — a critical issue for the industry and the CPCU Society."

"A Look into the Future" — our very unique "student-focused" seminar in Las Vegas — was a rousing success, as well. The seminar highlighted the property-casualty insurance industry's need for the "best and brightest" now and in the future, and provided the unique perspective of students working toward risk management/insurance careers. The seminar was specifically designed to help risk management and insurance students understand more fully the variety of paths available to them in the property-casualty insurance industry. Students also gained a clear understanding of the value of the CPCU designation in helping them on their chosen path.

Many thanks to our seminar speakers: **Noelle Codispoti, ARM,** executive director of Gamma Iota Sigma, the international risk management, insurance and actuarial sciences collegiate fraternity; **Dale M. Halon, CPCU, CIC,** vice president of sales, ISO Innovative Analytics; **Connor M. Harrison, CPCU, ARe, AU,** director of custom products, The Institutes; and **James R. Jones, CPCU, ARM, AIC,** executive director of the Katie School of Insurance and Financial Services at Illinois State University.

Forty students from some of the country's leading universities and colleges attended the 2011 CPCU Society Annual Meeting and Seminars in Las Vegas. Participating students, in alphabetical order: Alexander Abbott, St. John's University; Scott Adams, Illinois State University; Masmoudath Anjorin, Morgan State University; Matt Baber, University of Southern Maine; Ashleigh Buchanan, University of North Texas; Cheng Cheng, University of Illinois; Tyler Cockrum, Missouri State University; Erin Connell, University of Colorado-Denver; Danielle Corde, Boston College; Walter Filmore, University of North Texas; Brendan Francis, Howard University; Dan Fuld, Illinois State University; Kaitlin Graf, St. John's University; Weijing "Lilia" He, University of Illinois at Urbana-Champaign; Jocelyn Horton, University of Colorado-Denver; James Howe, UNC Charlotte; Jonathon Jaeger, University of Iowa; Christopher Juntura, University of Southern Maine.

Jennifer Medeiros, St. John's University; DeAndrai Mullen, Morgan State University; Jin Na, University of North Texas; Jacqueline Negrete, Southern Methodist University; Mason Novess, Olivet College; Christina Oda, University of Illinois; Kwesi Ofori-Atta, Georgia State University; Rachel Patterson, Appalachian State University; Linda Pollock, University of Southern Maine; Mary Rhodes, University of Louisiana at Lafayette; Ashley Rieger, Illinois State University; Benjamin Robbins, Appalachian State University; Sanae Russell, St. John's University; Catherine Sebolt, University of Iowa; Olena Shchukina, Georgia State University; Marcus Somerville, Georgia State University; Brigid Tarpey, University of Southern Maine; Ottonian "Toni" Tate, University of North Texas; Edward Van Strate, Olivet College; Erika Villavicencio, University of North Texas; Le'Yante Williams, Florida State University; and Dahao Zheng, University of Illinois at Urbana-Champaign.

Our hope is that all students, new designees and industry veterans walked away from this seminar with great ideas and a clear understanding of what is needed to grow our industry through the development of talented individuals. The CPCU Society is uniquely positioned — in large part due to the direction and support provided by chapter and interest group leaders — to offer a bridge between those who are seeking a rewarding future in the industry and those who are seeking people to contribute to a successful future.

2012 Student Program

As a direct result of the efforts of so many of you and your colleagues over the past two years, the Society has given our Student Program an enthusiastic "green light." Our next stop will be in Washington, D.C., for the 2012 Annual Meeting and Seminars.

Being ever mindful of chapter interests, overall expense considerations and very complicated coordination efforts, the 2012 Student Program has been amended slightly:

- The Society will waive Annual Meeting and Seminars registration fees for 24 students. This will allow for greater, focused attention on each student. As in previous years, registrations will be taken in the order of contact with the Society's Member Resource Center. The first 24 qualifying students will receive the waiver. A waiting list will be available in the event of student cancellations.
- Students must be juniors, seniors, or graduate students in risk management, insurance or actuarial sciences programs to qualify for the Student Program. This helps focus our attention on those students who have clearly chosen the insurance industry as their career path.
- All students must be individually recommended by their professor/advisor.
- Each participating university/college will be able to recommend up to two students.

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Reinsurance Encounters

CPCU Society
720 Providence Road
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2011 CPCU Society Student Program — 'Ongoing Success'!

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- Qualifying students who do not receive direct chapter sponsorship will receive "out-of-pocket" expense reimbursement based on chapter contributions to the 2012 Student Program.
- A chapter directly sponsoring a qualifying student for 2012 can reserve one spot among the 24 students within the program. This student must be named prior to Aug. 1, 2012, or the spot will be opened to the next student on the waiting list.

At the request of some chapter leaders, there is an option available for students who would not otherwise qualify under the 2012 Student Program guidelines. A chapter can choose to fully sponsor (including any payment of full registration fees) a "non-qualifying" student (e.g., business major). This student will be included in all Student Program activities and, if possible, will be "paired" with another student to help mitigate hotel expenses.

A final note: Once again, my sincere appreciation to all who contributed in so many ways to the success of our 2011 Student Program. Since "ongoing success" is fully expected again in 2012, please don't hesitate to contact me (lamontboyd@fico.com) with any thoughts you may have, or assistance you're willing to offer to help us attract bright, young minds to the insurance industry and the CPCU Society! ■

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