

January February, 2008

# PULSE newsletter

Pennsylvania Association of Mutual Insurance Companies

## From the President



I am writing this message during PA Farm Show Week. That week is traditionally marred by bad weather. Well, that certainly wasn't the case this week. Although temperatures over 60 degrees in January are rare, obviously they happen. In the same way, Mutual Insurance Day is historically linked with bitterly cold weather. I wish I could predict that this year's Mutual Insurance Day will be blessed with a spring like climate. But I can't.

But I can make three predictions with complete confidence.

First, the February 4 – 5 Mutual Insurance Day has a lineup of important presenters. Those of you who attend on Monday, February 4 will not regret it. You will hear presentations from Representative Glen Grell of the House Insurance Committee and from the leader of the Senate, President Pro Tem Joe Scarnati. Each of these men will field questions from attendees. These are two key legislators. That PAMIC was able to get them to visit with our members at such a busy time speaks well of PAMIC's known grassroots depth. So I don't need to emphasize to you how important your presence really is. There is no better way than a good turnout to demonstrate grassroots strength in a very tangible way.

Additionally, PAMIC will host Insurance Commissioner Joel Ario as our luncheon speaker and we will learn more about the all important Federal side of the governmental equation for NAMIC's Jimi Grande, Vice President, Federal Affairs. So I can predict that you will find Mutual Insurance Day informative, with ample opportunity to learn more about the issues that affect your business every day.

Second, I can predict that our legislative breakfast will be the best attended ever. And I mean attendance by both legislators and you the membership. How can I say that? Because attendance levels for both have increased each year for the past five years. That's true for the individual appointments we set up for you as well.

And finally, I can predict that if you have once attended Mutual Insurance Day, you will be back; you will recognize the value of building solid relationships with senators and representatives.

Now, don't prove me a false prophet. If you have not already signed up for Mutual Insurance Day, do it now. Tell us you want an individual appointment with your senator and representative. This is our most important legislative event of the year and I know I'll see you in Harrisburg.

Sincerely,

Steven C. Elliott, J.D., CPCU, CLU  
PAMIC President

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PHONE: (717) 303-0197

FAX: (717) 303-1501

WEBSITE: [www.pamic.org](http://www.pamic.org)

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# Chairman's Corner

## The Insurance Environment in Pennsylvania



From time to time we are all, as members of the insurance industry in Pennsylvania, asked our opinion of the operating environment for insurers in the Keystone state. Invariably, we answer the inquiry with a positive affirmation of the operating environment in Pennsylvania, without providing any real depth or context to our response as to how good it is in the Commonwealth, or what factors make it a favorable jurisdiction in which to operate. What are the reasons why Pennsylvania is

an attractive state to write property/casualty insurance? Let's examine some of the factors.

The first and most primary concern for any business selling products and services is the size of the available marketplace of consumers to buy those products and services. In 2007, global insurance premium volume (property/casualty and life/health) was \$3.72 trillion according to I.I.I. Of that global insurance market, the United States is the largest property/casualty market, at \$449 billion in annual premiums. Of the U.S. market, Pennsylvania is the sixth largest state in terms of premium volume, at \$19.9 billion in annual property/casualty premium volume. So, in terms of insurance consumers, insurers in Pennsylvania are operating in the sixth largest property/casualty market segment (by state), in the largest property/casualty market (by country) in the world.

As to the performance of the state on another key component of profitability, loss experience in Pennsylvania consistently ranks among the most favorable of all jurisdictions. There are a number of elements that contribute to Pennsylvania being a good state from a loss experience standpoint. The state does not have a high exposure from a property catastrophe point of view, and generally the judicial climate is reasonable and predictable.

But, I submit that there is another factor involved. Through the proactive and diligent efforts of your trade association, the legislative and regulatory environments in Pennsylvania have been, in the main, very favorable.

PAMIC plays a central role in protecting the best interests of insurers and their policyholders with respect to both proposed insurance legislation and insurance regulation. Through its committees, PAMIC develops detailed position statements on all key issues facing the insurance industry, and then advocates the position of its member companies to legislators, legislative staff and insurance regulators.

The overall favorable operating environment in Pennsylvania from both a legislative and regulatory perspective is not happenstance. It is a direct result of your trade association's efforts in being a very credible resource on insurance issues on Capitol Hill and with the Insurance Department. PAMIC has forged strong working relationships with legislators and regulators for the benefit of all of its members, and the strength of those relationships is central to having the voice of the insurance industry heard on important issues facing us as an industry. In fact, unparalleled by many trade associations, PAMIC touts members in almost all 67 counties of the Commonwealth.

This allows PAMIC to have the greatest impact on lawmakers who recognize the importance in serving their constituency by harnessing the strength of one voice to bring issues to the forefront for all its members.

I would encourage all of you to participate in the upcoming legislative event on February 4 and 5 in Harrisburg, where PAMIC is briefing its members on current issues and then facilitating individual meetings with your local legislators and their staff on Capitol Hill. This grassroots political activism is of paramount importance if we are to be successful in seeking to maintain a vibrant, fair and equitable insurance marketplace in Pennsylvania.

PAMIC also meets regularly with the Pennsylvania Insurance Commissioner, various Deputy Insurance Commissioners and Insurance Department staff to discuss proposed insurance rule-making, as well as to understand and help shape Department policies on relevant issues impacting our industry. PAMIC's goal is to foster responsive collaboration between carriers and the Department on regulatory issues, and to encourage the proactive addressing of issues and the finding of solutions to problems facing insurers in Pennsylvania.

At our August 2007 convention, we had a panel discussion led by Deputy Insurance Commissioners Gallagher and DelBiondo, where the Department announced an initiative to encourage carriers to meet with Department personnel once a year to discuss the current business plans and operations of the carrier and to enable the Department to talk with the company about current regulatory hot buttons and the Department's position on newly emerging issues. I would urge each of our member companies take full advantage of this offer for proactive dialogue and discussion by the Department with carriers on an individual meeting basis. PAMIC can help your company facilitate such a meeting, as well as work with your staffs to prepare you to get the most benefit possible out of these collaborative meetings with our regulators.

In closing, I would say that your Association provides meaningful opportunities for each member company to nurture and cultivate strong working relationships with Pennsylvania legislators and regulators with the ultimate aim of ensuring a positive business environment for the insurance industry in our state. These opportunities are yours for the taking. Please call PAMIC's staff to see how you can position your company to participate in these relationships-building initiatives.

Sincerely,

Kenneth R. Shutts  
President and COO  
Penn National Insurance

# A Featured Article

## SUPERIOR COURT HANDS DOWN DECISION THAT HELPS INSURERS RESOLVE "MATCHING" DILEMMA

**Matthew C. Lenahan, Esquire** *DiBella, Geer, McAllister & Best, P.C.; 312 Boulevard of the Allies, Pittsburgh, PA 15222*  
**Richard W. DiBella, Esquire**

Richard W. DiBella is a shareholder and Matthew C. Lenahan is an associate at the law firm of DiBella, Geer, McAllister & Best, P.C., a full-service insurance firm located in Pittsburgh.

Once an insurer commits to replace or repair a portion of a damaged building, questions will frequently arise as to the scope of the insurer's duty to "match" the new replacement material with the preexisting material; these questions most often arise from claims centering around damaged roofs, vinyl siding and tile floors, where the damaged portion is easily replaced without disturbing the remaining undamaged portion. The "matching dilemma" arises when an exact match for the siding or the tile cannot be found; does the insurer have an obligation to then replace the entire portion of the building, both damaged *and* undamaged, in order to achieve an aesthetic "match" for the insured?

While Pennsylvania Courts have long recognized this dilemma, they have provided little guidance on its resolution. A recent Superior Court decision, however, has been handed down which holds that using replacement materials similar in "function, color and shape", though not identical, meets policy requirements for using "like construction." While the decision *Greene v. USAA*, 2007 WL 4110632 (Pa.Super. 2007), is clearly beneficial to insurers faced with the matching dilemma on a claim, it is equally important to recognize the limits of the holding based upon the equities of the case.

In November of 1998, the insureds' upstairs bathroom was damaged when water leaked through a skylight that existed in the roof. During the investigation of the claim it was determined that the seal around the skylight was broken and leaking, and also that the insureds' roof had incurred some storm damage and had lost three shingles from the front slope of the roof. Typical wear and tear was also found on the roof. In March of 1999, USAA approved payment for portions of the insureds' claim, which included a payment of \$290.92 for minimal roof repairs. USAA also notified the insureds that typical wear and tear on the 18 year old roof was not covered under the policy. Shortly thereafter, the insureds submitted a second claim, alleging that a wind storm caused additional damage to the same slope of the roof. When USAA went to investigate the additional damage, they discovered that the insureds had already paid for the entire roof to be replaced. Based upon pictures of the additional damage, USAA eventually issued another \$1,434.54 in payment for the roof. The insureds sought payment for the entire cost of the roof replacement, based on the fact that matching roof shingles could not be found, but USAA refused to pay the full replacement cost. The insureds filed suit in Montgomery County claiming, *inter alia*, that USAA breached its insurance contract by not paying full replacement cost of the roof when it knew matching shingles were not available. The Montgomery County trial court awarded the insureds \$3,173.37 for damage to their home, and the insureds appealed, contending that the award was insufficient for reasons set forth below.

The insureds appealed the holding of the trial court on several issues, including the issue of matching. The USAA policy in effect stated that they would pay for the "replacement cost of that part of the building damaged." The policy went on to state that payment of replacement cost "will not exceed that necessary for the like construction and use on the same premises...." The insureds, on appeal, argued that, because the "part of the building damaged" was the roof, and because the damaged shingles were no longer in production, "like" construction meant an entirely new roof, as opposed to a roof with mismatched shingles.

The Superior Court began its analysis of this issue by agreeing that the policy clearly and unambiguously requires USAA to pay the replacement cost of the "part of the building damaged." However, the Court stated that the insureds' interpretation of the policy language, including interpreting the entire roof as the part of the building damaged, was "unreasonable and absurd." At most, the court continued, the part of the building damaged was the one slope of the insureds' multi-sloped roof. Quoting the trial court to highlight the absurdity of the insureds' position, the Court stated that "[t]o utilize [insureds'] logic would necessitate replacing all siding when one piece of siding is damaged, or an entire door when a door knob is damaged. It defies common sense."

The Court did not find the insureds' additional argument, respecting the term "like construction", any more valid. While it was clear that matching shingles were no longer available, trial testimony indicated that shingles of similar texture and color could have been used. The Court went on to state that the USAA policy provided for:

[L]ike construction, not replacement with the identical item damaged. We are satisfied that the repair of the damaged slope of [the insureds'] roof with shingles similar to the damaged shingles in function, color and shape meets the parameters of 'like construction' as called for by the policy language.

Thus, the Superior Court upheld the ruling of the trial court, affirming that USAA did not need to pay for the replacement of the insureds' entire roof due to non-matching shingles used to repair the same.

# Education Update

Register today at [www.pamic.org](http://www.pamic.org)

## 9th Annual PAMIC Mutual Insurance Day

February 4 & 5, 2008

Hilton Harrisburg and Towers

One North Second Street • Harrisburg, PA

Monday Sessions

*Check out this outstanding line up of speakers:*

Joel Ario, PA Insurance Commissioner

Jimi Grande, VP Federal & Political Affairs, NAMIC

Glen Grell, Member House Insurance Committee

Randy Rohrbaugh, Deputy Commissioner

Joseph Scarnati, President Pro Tempore

Please plan to attend the PAMIC PAC Legislative Reception

Monday, February 4 from 5 to 7 pm

(Separate registration required)

Tuesday events include:

Breakfast with legislators at the PA State Capital

Appointments with your state Senator and Representatives

*Register today for these important events!*

## Annual Spring Conference

March 12, 2008

5:30 - 6:30 pm

Conference Reception ~ Sponsored by *MSO, Inc.*

March 13, 2008

Continental Breakfast ~ Sponsored by *Town & Country Computer Services*

Luncheon ~ Sponsored by *Guy Carpenter & Company, Inc.*

Sessions include:

- ❖ Regulatory Update, Steven C. Elliott, JD, CPCU, PAMIC
- ❖ Financial Examination Requirements, Matthew Schnader, CEO, Reamstown Mutual
  - ❖ Disaster Recovery, Gary Yeager, Agility Recovery Solutions
  - ❖ Agent Relations Panel
- ❖ Making Policy Changes, Karen Balaban, Esq., Karen Balaban, Inc. and Carolyn Morris, Director, Bureau of Consumer Services

For registration information, please visit [www.pamic.org](http://www.pamic.org)

or call PAMIC at 717-303-0197

## About The Philadelphia Contributionship



The Philadelphia Contributionship is the oldest mutual insurance company in the U.S. Formed in 1752 by Benjamin Franklin, the original company name was “*The Philadelphia Contributionship for the Insurance of Houses from Loss by Fire*”.

Franklin cared deeply about fire safety. He wrote extensively about the methods for extinguishing a fire and fire safety in the home. The first volunteer fire company he helped form was called the “Union Fire Company”. One can only imagine the difficulties these early fire-fighters must have endured. The early fire wagons were pulled by man-power. Bucket brigades would be formed near a burning structure using 3 gallon leather buckets. It was during a gathering of volunteer fire fighters that the concept of an insurance company that would offer protection for houses from loss by fire was conceived.

The Contributionship’s first board of directors consisted of William Coleman, a merchant and Franklin’s good friend; Philip Syng, a silversmith; carpenter Samuel Rhoads; Hugh Roberts, an iron monger and tobacconist; Israel Pemberton, know as the “King of the Quakers”; John Mifflin, a store owner; Joseph Fox, a carpenter and real estate investor; Jonathan Zane, a rum and molasses salesman; William Griffiths, 28 years old; Amos Strettell, importer; and of course, Benjamin Franklin, who was at that time clerk of the Assembly, printer and publisher of the *Pennsylvania Gazette*, postmaster, and an inventor.

The early company was based on the English system of mutual insurance, specifically that of the Hand in Hand of London whose firemarks were clasped hands. The Contributionship’s logo and name were derived from the 18th century definition of contribution, “that which is given by several hands for a common purpose”. Early business transactions took place in the home of the clerk or at local taverns. Thomas U. Walter was commissioned to design and build the first office for the company as well as a home for the treasurer and his family. Major renovation and careful restoration was done to the Contributionship in 1974.

Benjamin Franklin would certainly be proud of the Philadelphia Contributionship of 2008. Although much larger and more profitable today, The Philadelphia Contributionship continues to be dedicated to providing insurance services to its members and policyholders. They have received an A+ rating from A.M. Best & Company, as evidence of the superior quality of products they offer their policyholders.



Part of an engraving of the early Philadelphia waterfront as seen from the New Jersey shore by George Heap in 1752.

Special thanks for their help in providing information for this article to: Mr. Joseph F. Morris, President & CEO of The Philadelphia Contributionship and Ms. Stacey Manzo, Corporate Secretary.

# Member News

## Goodville Mutual Casualty

**Company** is very pleased to announce that **Fred Macy** has accepted the invitation to serve as Marketing Vice-President/Manager. Fred Macy has over 30 years of experience in the insurance industry and his designations include CPCU, AAI, AU, AFIS, ACSR, & CIC. Most recently Fred Macy has been developing and teaching continuing education curricula for P&C agents through Gray Wolf Insurance Seminars, a company he founded in 1996.

**Linden Sommers** also joins the marketing team at Goodville Mutual as the new Assistant Marketing Manager. Linden Sommers has 7 years of experience in the insurance industry and graduated from Delaware Technical and Community College with an Associates Degree in communications. He was previously employed by Samson Communications in southern Delaware as a news director and DJ along with work in promotions and advertising. Most recently Linden Sommers was a Commercial Lines underwriter with Goodville Mutual.

With a growing independent agency base, the goal and vision for this new marketing team will be to bring in new ideas and assist in the success of an aggressive marketing strategy throughout Goodville Mutual's coverage territory. Goodville feels very confident with the make-up of the new marketing team and is looking forward to the fresh vision and renewed vigor that changes in leadership can bring.

Congratulations are in order for **Jan Hildebrand** of Ephrata PA who has been promoted to the position of Commercial Lines Underwriter for Goodville Mutual Casualty Company. Jan has over 20 years of experience in the insurance industry both in accounting and underwriting. Goodville Mutual is pleased to be able to utilize her skills and abilities to bolster their capacity in overseeing a growing book of Commercial Lines business.

Are you a  
**PAMIC PAC**  
Supporter?  
Join us  
today.

## Mutual Benefit Group

**Frances V. Vaughn** has been named vice president - human resources for Mutual Benefit Group. Her responsibilities include developing, maintaining, and controlling the human resources management functions and employee benefit programs for the Company, including performance appraisal, personnel policies and benefits, strategic planning, staff training and development, and budgeting.

**Rose Gladfelter** has been promoted to claims representative with Mutual Benefit Group. In this position she is responsible for investigating and settling workers' compensation claims.

**Stephen Clewell** was promoted to programmer with Mutual Benefit Group in October 2007. In this position, he performs analysis, design, programming, and testing of applications; provides support and maintenance for production systems; and contributes to the design and development of a data warehouse.

**Luke Fraenza** was promoted to programmer with Mutual Benefit Group in October 2007. In this position he performs analysis, programming, and testing to create functional and technical designs, and assists in developing and conducting technical user training.

## MDWC&G

**PHILADELPHIA, PA** – **Bradley D. Remick, Esq.**, of Marshall, Dennehey, Warner, Coleman & Goggin (MDWCG), will serve as co-chair at Mealey's conference entitled *Mealey's Product Recall Conference: Made in China and Beyond*. The event will take place on December 10 and 11, 2007 at The Madison Hotel in Washington, D.C..

The conference will provide an in-depth overview of current product liability law suits involving numerous foreign countries, offer advice on how to deal with overseas vendors and suppliers during a recall, and how to stay on track when conducting arbitrations on foreign soil.

Attendees will learn how to write arbitration clauses that stand up in China and other foreign countries, get the inside story on the current products recalled, examine recent arbitration awards and how to get them enforced, find out how lead exposure affects children, hear from insurance coverage attorneys on issues like business interruption, and discuss the current regulatory situation and the status of reform efforts.

**Daniel J. Sherry, Esq.**, served as a faculty member at the Philadelphia session of the latest Pennsylvania Bar Institute (PBI) seminar entitled *Current Issues in Medical Malpractice*. The session took place on December 13, 2007, and it was video-conferenced to Mechanicsburg, PA. Mr. Sherry's main topic was titled *The Availability of Adverse Inferences in Medical Malpractice Cases*.

The PBI event spanned two days (December 13 and 20, 2007) and three locations (Philadelphia, Mechanicsburg, and Pittsburgh). It included an extensive presentation of new developments in the case law, as well as legislative changes, addressing issues from the requirement for Certificates of Merit, through mediation and settlement, to the latest discovery issues and trial techniques. Attorneys from both plaintiffs' and defense counsel focused on many of the issues faced regularly by those involved in medical malpractice litigation.

## More Member News

It is always exciting to welcome new PAMIC members and this month's newest member is: FireDEX.

**FireDEX of Pittsburgh**, "Specialists in Insurance Repair and Restoration", are locally owned and operated and are one of the largest full service restoration contractors in the Pittsburgh area with office locations in Allison Park and Bridgeville. They have the staff, equipment and facilities to handle the restoration of residential or commercial property, including structure cleaning, contents cleaning and complete construction services. They offer 24-hour emergency service, which enables them to be able to respond immediately to any property claim in Southwestern Pennsylvania.

FireDEX's main facility, located in Allison Park, includes over 12,500 square feet of office and warehouse space in order to provide on-site deodorization and cleaning as well as storage space large enough for the contents of up to 12 average size homes at any time.

At FireDEX of Pittsburgh, they guarantee prompt and professional service of the highest quality. They take great pride in being "Specialists in Insurance Repair and Restoration", as well as a leader in the restoration industry for over 25 years.

Company Contact Information: PJ Petrarco: (412) 337-9927 or Dave Tocci (412) 337-3240. Phone number: (888) 347 - 3339. Website: [www.firedexpg.com](http://www.firedexpg.com); Address: 4030 William Flynn Highway, Allison Park, PA 15101.

*Article continued from page 3...*

Clearly, this is a favorable decision to insurers who are faced with a "matching dilemma." The "similar function, color and shape" test will be a beneficial guidepost when attempting to resolve these claims. However, it is important to be cognizant of the equities in the case which may necessarily limit its holding. There appears to have been very limited damage incurred to the insureds' roof, compared to the large cost of replacing the whole structure; also, the Superior Court hints that the insureds' motive was simply to get a new roof, and notes that the second claim was submitted in March, right when the insureds discovered that wear and tear to the 18 year old roof would not be covered under their first claim. Furthermore, the insureds had their entire roof replaced as soon as they submitted the second claim, and before USAA had the opportunity to inspect the same.

Many carriers have developed matching endorsements and matching limitations. Obviously, when reviewing any claim with a matching or mis-matching issue, it is important to first consider your policy language in relation to the language of the within case.

Should you have any questions regarding this case, do not hesitate to contact the authors at 412-261-2900.

## 2008-2009

## Upcoming PAMIC EVENTS

### Mutual Insurance Day

**February 4 & 5, 2008**

The Capitol Complex  
Harrisburg, PA

### Human Resources Roundtable

**February 13, 2008**

Lititz Mutual Insurance Company  
Lititz, PA

### Annual Spring Conference

**March 13, 2008**

Nittany Lion Inn  
State College, PA

### Claims Summit

**April 2 & 3, 2008**

Holiday Inn East  
Harrisburg, PA

### IS Seminar

**May 8, 2008**

Lititz Mutual Insurance Company  
Lititz, PA



**SAVE THE DATE:  
PAMIC/VAMIC /WVAIC  
CONVENTION  
Nemacolin Woodlands Resort  
August 3-5, 2008**

Pennsylvania Association of  
Mutual Insurance Companies  
1017 Mumma Road, Suite 103  
Wormleysburg, PA 17043



# **PAMIC/VAMIC/WVAIC Combined Annual Convention!**



**Nemacolin Woodlands Resort**

[www.nemacolin.com](http://www.nemacolin.com)

**August 3 - 5, 2008**

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**Chateau Accommodations \$299 per night**

**Lodge Accommodations \$250 per night**

**Two Bedroom Townhouse \$250 per night**

**(Townhouses are on site, approximately one mile from meeting area,  
near playground and zoo. Drive your own car or take a  
Nemacolin shuttle to and from meeting rooms.)**

**Look for Convention Registration material  
to arrive April 2008.**

**2008 Convention Registration Fees:**

**Member Registration \$195 ★ Spouse Registration \$125**