

July—August, 2006

PULSE newsletter

Pennsylvania Association of Mutual Insurance Companies

From the President



I am writing this message just as PAMIC PAC is preparing to send solicitation letters to the CEOs of all PAMIC members. When you receive the letter, please consider carefully its message. Government affairs is one of the three strands that make up PAMIC, together with education and networking. We need all three to have a strong and effective impact on behalf of our industry. And when it comes to government affairs, the insurance industry has a

greater need than most businesses, because we are far more heavily regulated than most. PAMIC members and their executives understand this. So I will not repeat the contents of the letter. But what I do want to do is further explain why it is that membership dues alone are insufficient to fund an effective government affairs program.

Some people object to PAC (political action committee) activity because they fear that campaign contributions from a PAC are little more than bribes. Even the most cynical citizen should recognize that that is far from true. Payment of money as a specific quid pro quo for a particular political act is almost unheard of, and we can all be grateful for that fact. Well then, what is the point of political contributions? The answer can be summed up in one word: access. State representatives and senators in a big state like Pennsylvania with a fulltime legislature are very busy people. The demands on their time can be almost overwhelming. A huge number of varying and often conflicting interests, businesses, citizen groups, and constituents vie for very limited appointment time. A lobbyist who represents a group that has been a consistent supporter of a legislator will just naturally have an edge in getting meeting time over an unknown. There's nothing wrong with that. He or she just can't see everybody. So they might as well see those who are important to them.

So even though your PAMIC dues goes to support government affairs activity, that is just half the picture. I can be informed on issues and I can know what you the members want, but if I don't have meaningful access to important legislators, the job still doesn't get done. Remember, PAMIC dues do not, indeed cannot, go to direct political contributions. *Continued page 6*

INSIDE THIS ISSUE

- ▶ FROM THE PRESIDENT.....1
- ▶ CHAIRMAN'S COMMENT....2
- ▶ GOVERNMENT AFFAIRS.....3
- ▶ EDUCATION UPDATE.....4
- ▶ CONVENTION.....5
- ▶ MEMBERS NEWS 7
- ▶ UPCOMING EVENTS.....

ID STATEMENT

PULSE
 July-August, 2006
 Volume 37, Issue 7
 ISSN: 0893-2530

PULSE is published bi-monthly by the Pennsylvania Association of Mutual Insurance Companies (PAMIC) located at 1017 Mumma Road, Suite 103, Wormleysburg, PA 17043 for its members and associate members.
 PHONE: (717)303-0197
 FAX: (717)303-1501
 WEBSITE: www.pamic.org

NOTE: With the exception of official association announcements, the Pennsylvania Association of Mutual Insurance Companies disclaims responsibility for opinions expressed and statements made in the PULSE. This publication is intended and designed to provide accurate and authoritative information, not to provide legal, accounting, or other professional advice or services.

Chairman's Comments



“Serve and Be Served”

I have been learning from the PAMIC organization for so long, it will be impossible for me to give comments without repeating what I have heard from PAMIC and similar organizations. I have often said

that I never had an original idea. I have survived and grown by learning from the mistakes and successes of others. This is where the association has shined for me.

Through the educational seminars other members and associate members have been able to guide us around many of the landmines of the insurance industry. Of equal importance is the networking during lunch and breaks at these seminars.

As a single company we would have little voice in reaching the hearing of our legislature. With the combined voices of the PAMIC membership we have been able to slow down the hindering effects of legislation and regulation that is often not beneficial for companies or our customers.

Over the past couple of years, I have been observing the benefits that I receive from our PAMIC membership. I have also observed that not all companies avail themselves of all of the benefits that membership offers. If you are asking this question, “How has PAMIC served me?” it may be that you are not availing yourself of many of the benefits of PAMIC membership.

Receiving the benefits of PAMIC is much like the old adage which states that one can lead a horse to water, but you can't make him drink. PAMIC cannot help you if you choose to stay home and do it alone. The various committees provide the water, it is up to you to move forward and drink. Being on a committee multiplies the benefits that are available to members. PAMIC is an organization where the more you give, the more you receive. New employees and members new to the industry will gain much by serving.

If you are looking to PAMIC for legislative assistance, education and networking, then you and your employees will have to make the effort to drink by attending seminars and round tables and especially by serving on committees.

THE CONVENTION IS COMING

The convention is the primary watering hole of the year and it is just around the corner. For many of us the Home-stead will be an experience to remember. And with this backdrop, the convention committee has come through with an agenda that appears to be on par with successful conventions of the past. There will be educational opportunities for company executives and for directors. Of equal importance is the vast networking opportunities presented at a convention. In addition to your peers, there will be reinsurers and other industry experts on hand for ideas on how to improve your company. Also, we have been informed that the vendors' area is full with a waiting list. If you come to the convention, it will be a better convention. If you don't come, we all lose. I am looking forward to seeing you there.

Very truly yours,

Robert A. Fitzsimmons
President/CEO
Farmers Mutual Fire Insurance Company of Marble
2006—2007 PAMIC Chairman

In an effort to reduce mailing costs of the *Pulse*, PAMIC is emailing the *Pulse* to those who have email addresses.

If you currently receive the *Pulse* by mail and have an email address, please send your email address to:

pamic@pamic.org

Government Affairs

Details, Details, Details

Jennifer Wojciechowski, Esq., Randy J. Maniloff, Esq.
White and Williams LLP 1800 One Liberty Place, Philadelphia, PA 19103

Randy J. Maniloff is a Partner and Jennifer L. Wojciechowski an Associate in the Business Insurance Practice Group at White and Williams, LLP in Philadelphia where they represent insurers in coverage disputes. The views expressed herein are solely those of the authors and are not necessarily those of their clients or firm.



What's the difference between the terms "an," "any" and "the"? Answer: coverage.

Last month the United States District Court for the Middle District of Pennsylvania issued a decision in a coverage case that broke no new ground and likely went unnoticed by almost everyone but the parties themselves. Yet, this decision merits close attention by coverage professionals as it provides an excellent reminder of the significant effect that a policy's subtleties – and even seemingly minor subtleties -- can have on the availability of coverage.

In *Allstate Insurance Co. v. Callaghan I/A/D/B/A Top of the Mountain Day Care et al.*, 2006 U.S. Dist. LEXIS 37218 (M.D. Pa. June 7, 2006), the Middle District addressed Allstate's obligation to defend and indemnify Charles Callaghan and K.C. (the minor child of Charles and Cynthia Callaghan) in an action pending against them in the Court of Common Pleas of Schuylkill County. This underlying action alleged that a plaintiff child was subjected to deviate sexual behavior by K.C. while attending Cynthia Callaghan's day care center. The parents of the alleged child victim also included an allegation that Charles Callaghan was negligent and careless in his supervision of his minor child, K.C.

Allstate moved for summary judgment on the basis that no coverage was available for Charles Callaghan or K.C. under the Deluxe Homeowners Policy issued to Charles and Cynthia Callahan because it contained a "business activities" exclusion that precluded coverage for "bodily injury or property damage arising out of the past or present business activities [of] **an** insured person." (emphasis added).

Allstate contended that the "business activities" exclusion extended to preclude coverage for Charles Callaghan, as well as the minor child K.C., notwithstanding that it was Cynthia Callaghan who owned and operated the day care center – not her husband or minor child.

The court noted that whether an exclusion will bar coverage for a so-called "innocent" co-insured has turned on the policy's language and, specifically, whether the exclusion refers to "an," "any" or "the" insured. Quoting *Gen. Acc. Ins. Co. v. Allen*, 708 A. 2d 828, 832 (Pa. Super. 1998), the *Callaghan* Court stated: "Where the policy contains language which 'unambiguously' excludes coverage to the innocent co-insured who did not intend the damage of injury, then the language excludes coverage to such innocent co-insured."

The *Callaghan* Court, relying on *Allen*, observed that when an exclusion refers to "the" insured, "the act in question [must] be intended by the insured in question, not another insured." However, a policy's reference to "an" insured is often equated with "any" insured. Because the exclusion at issue referred to the business activities of "an" insured, rather than "the" insured, the *Callaghan* Court held that no coverage was available for either Charles Callaghan or K.C., notwithstanding that, because it was Cynthia Callaghan who owned and operated the day care center, they were "innocent" co-insureds.

The parents of the minor child also sought damages for Cynthia Callaghan's crime of endangering the welfare of a child (for which Ms. Callaghan was convicted with respect to the conduct of her minor son). The Allstate policy precluded coverage for "bodily injury. . . intended by or which may reasonably be expected to result, from the intentional or criminal acts or omissions of **any** insured person." (emphasis added). In addition to this exclusion precluding coverage for Cynthia Callaghan due to her conviction, the court also held that it precluded coverage for Charles Callaghan and their child, K.C., as the exclusion applied to "any" insured. (*continued on page 6*)

Education Update

Upcoming Seminars from PAMIC!

Financial Management Seminar

September 27, 2006
The Wyndham
Harrisburg/Hershey

Sessions Include:

The State of the Industry with Bill Boyd, NAMIC
State Regulatory Update with Steve Johnson , PA Insurance Department
Tax Issues for Insurance Companies with Gregory J. Gaudio, CPA
Annual Statement Update with Scott Esworthy, Brown Schulz Sheridan & Fritz
Reinsurance Panel Discussion
Economist Outlook 2007

Look for registration information coming in August.

PAMIC Mid-Atlantic Insurance School

INS21

Property & Liability Insurance Principles

October 11-13, 2006
Office of Brown Schulz Sheridan & Fritz
Camp Hill

Back by Popular Demand!

The INS series of courses offered through PAMIC continues to provide such a worth while educational experience that students are asking for more.

As with past PAMIC Schools, this one will be taught by insurance professionals with years of practical experience. Our instructors are top notch presenters who keep a three day course both interesting and informative.

Mark your calendar now to attend this superior educational event!

INS21 is perfect for anyone:

- New to the insurance industry.
- Seeking to develop his or her insurance knowledge.
- Preparing for the INS21 Exam through IIA. INS21 is the first in the series of three classes that make up the IIA *Certificate in General Insurance*.

Look for registration information coming in August.

For more information on these seminars and other education opportunities available through PAMIC, visit the association website at www.pamic.org or contact Marri Lamoureaux at 717 303.0197 or mlam@pamic.org

2006 PAMIC/VAMIC Convention



**PAMIC gives a special “THANK YOU” to our
2006 PAMIC/VAMIC Convention Sponsors:**

Diamond Sponsors:

**Guy Carpenter & Company, Inc.
Gen Re
Towers Perrin**

Platinum Sponsors:

**Aon Re Inc.
MSO, Inc.
Saul Ewing LLP**

Gold Sponsors:

**Benfield Inc.
GE Insurance Solutions
Madison Scottsdale Investment Management
Millers Mutual Group
Mutual Boiler Re
Mutual Reinsurance Bureau
PA Lumbermens Mutual Insurance Company
Penn National Insurance
Swiss Re**

Silver Sponsors:

**American Re-Insurance Company
bmc (Beard Miller Company, LLC)
BF Re Underwriters, LLC
Compensation Resources, Inc.
Cumberland Insurance Group
GMAC RE
Goodville Mutual Casualty Company
Hartford Steam Boiler
Loudoun Mutual Insurance Company
MSB
Mutual Inspection Bureau, Inc.
Travelers BoilerRE**

Emerald Sponsors:

**ARI Insurance Companies
Conemaugh Valley Mutual Insurance Company
Farmers Mutual Fire Insurance Company of McCandless Township
Juniata Mutual Insurance Company
Karen M. Balaban LLC
Tuscarora Wayne Group of Companies**

From the President

That must come from PAC contributions. So please don't think that a PAC contribution would mean paying extra for something already covered by your dues. They are related, but they have distinct functions.

Having said all that, I recognize that PAMIC member executives may have legitimate reasons why they decide not to participate in the political process in this manner. If they decide not to participate by monetary contributions, does that shut them out of the political process? Certainly not. How can their voices be heard and how can PAMIC help? Here's how.

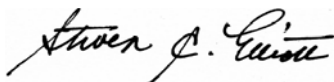
Remember what I just said about the limited time legislators are able to snatch away from other duties to meet with people? I said that they will try to make time to see those who are important to them. If a person is sufficiently important, most legislators will make time. Who is sufficiently important?

You are. You are a very important person to your own state representative or senator. Think about it for a moment. How many legislators would not bend over backward to see the head of an important locally headquartered business? How many would not make time to see you? And PAMIC is uniquely positioned for this kind of grassroots effort. PAMIC has a home office in half of Pennsylvania's counties. That is absolutely unparalleled coverage.

This year is an important election year. How can PAMIC help you leverage your effectiveness this year? Stay tuned for developments, but in the meantime think about these two approaches. First, I'll call you. If you can come to Harrisburg for an appointment with your own senator or representative, I'll join you to supply the technical detail. On an important issue and with an important legislator, I'll call you. Several member company executives have already helped out this way. Second, you call me. In other words, I'll go to your local district office with you. Several of our members have set up in-district meetings and they find that there they can have more detailed yet relaxed discussions than if they were squeezed into a fifteen minute appointment between a committee meeting and a floor session in Harrisburg. A couple of our members have set up meetings at their company offices. This is an even more powerful tool to impress a legislator with your local presence and the true local impact of Harrisburg issues.

So as this important election year starts to move into high gear remember: Stay tuned to PAMIC, respond to PAMIC's grassroots requests, and call PAMIC when you want a meeting in your district.

Sincerely,



Details, Details, Details *(continued from page 3)*

The Allstate policy at issue in *Callaghan* contained a joint obligations clause: “[T]he responsibilities, acts and failures to act of a person defined as an insured person will be binding upon another person as an insured person.” The court relied upon this clause as “additional” support for its decision. However, based upon its analysis, the *Callaghan* Court would have reached the same decision even if the policy did not have a joint obligations clause.

On one hand, there was nothing new about the court's decision in *Callaghan*. Several Pennsylvania courts have addressed the distinction between the terms “an,” “any” and “the” when examining coverage for so-called innocent co-insureds. *See, e.g., General Accident Ins. Co. of Am. v. Allen, supra* (exclusion precluded coverage for “the” insured committing the act, not innocent co-insured); *McAllister v. Millville Mut. Ins. Co.*, 640 A.2d 1283 (Pa. Super. 1994) (exclusion applicable to “an” insured precluded coverage for innocent co-insured); and *Maravich v. Aetna Life & Cas. Co.*, 504 A.2d 896 (Pa. Super. 1986) (exclusion precluded coverage for “the” insured committing the act, not innocent co-insured).

On the other hand, *Callaghan* serves as a useful reminder that insurers should not be afraid to rest a coverage decision on what could be perceived by the insured as a hyper-technical interpretation of the policy. Pennsylvania courts deciding coverage disputes – and *Callaghan* was no exception – often state that they are bound by the parties' intent as manifested by the language of the policy. There is no doubt that the *Callaghan* Court, by basing its decision on the distinction between the terms “the” insured and “an” insured, took this maxim of policy interpretation very seriously.

For a more in-depth look at this issue, see *BP America, Inc. v. State Auto Property & Casualty*, 2005 Okla. LEXIS 65, in which the Supreme Court of Oklahoma cited nearly 60 cases from around the country that have addressed the distinction between the phrases “an” insured,” “any” insured and “the” insured, as used in a policy exclusion. The *BP America* Court also examined in detail the potential effect that a policy's “severability clause” can have on the analysis (a subject that is beyond the scope of this brief case summary).

From Harford Mutual CEO Search

Harford Mutual Insurance Co, a mid-Atlantic property and casualty company since 1842, is seeking a President and CEO.

Candidate must possess strong leadership skills and experience in P&C insurance, reinsurance, coverage's and information technology.

Interested candidates should send resumes by August 1, 2006, to:

**Harford Mutual
Ellen Truant, CEBS
Vice President Human Resources
200 North Main St
Bel Air, Maryland 21014**

From Lititz Mutual

Lititz PA— **Henry H. Gibbel** was honored by Juniata College with the John C. Baker Award for Exemplary Service. The Award was presented by the College's Board of Trustees to recognize and honor individuals for exemplary service to Juniata College. Mr. Gibbel is the 4th recipient since the establishment of the Award in 1997.

A 1957 graduate of Juniata College, Mr. Gibbel has served on the College's Board of Trustees since 1973 and as the Chairman of the Board for the past five years.

Mr. Gibbel, the President and CEO of Lititz Mutual Insurance Company has likewise served on the PAMIC Board of Directors and as its President.

From Mutual Benefit Group

Huntingdon, PA—**Mary A. Beegle**, Personal Lines Underwriting Specialist at Mutual Benefit Group, successfully completed the Associate in Reinsurance program of the Insurance Institute of America on May 8, 2006.

In order to earn the ARe designation, Ms. Beegle completed a rigorous curriculum to enhance her understanding of reinsurance products, terms, and pricing.

Ms. Beegle is a 26 year veteran of the insurance industry.

From Tuscarora Wayne

Wyalusing, PA—**Jay W. Chadwick** President and CEO of Tuscarora Wayne Group of Companies is pleased to announce the promotion of **Michael J. Kusmierz, Jr.** to Assistant Vice President-Keystone National Operations.

Mike began his career with Tuscarora Wayne in 1991, as an accounting assistant with support to claims and computer processing, and was later promoted to staff accountant. In 1995 he transferred to underwriting, receiving promotions in 1996, 1997, and in 2001 was promoted to Territory Unit Manager.

Mike has earned a Bachelor of Science degree from the College of Business Administration from the Pennsylvania State University. He has also earned a Certificate in General Insurance and the Chartered Property and Casualty Underwriter (CPCU) designation, both sponsored by the American Institute for Chartered Property Casualty Underwriters (AICPCU). Mike's responsibilities will include oversight and direction of Keystone National Insurance Company.

From Fox Rothschild LLP

Philadelphia—**Carl Anthony Maio** of Fox Rothschild LLP, has been named a Pennsylvania Super Lawyer for 2006. Pennsylvania Super Lawyers are chosen from a state-wide survey of practicing Pennsylvania attorneys. Less than 5% of PA's lawyers receive this peer recognition.

From Wayman, Irvin & McAuley

PAMIC is pleased to announce that the Pittsburgh law firm of **Wayman, Irvin & McAuley, LLC**, has recently joined the PAMIC organization as an associate member.

Established in 1965, WIM has earned its reputation for quality representation in all aspects of insurance defense litigation. WIM represents insurance carriers and their insureds in a broad range of practical areas, including bad faith, coverage, products liability, premises liability, toxic torts, automobile, transportation and municipal liability. The firm's professional malpractice experience includes successful defense of architects, engineers, project managers, insurance brokers and agents, real estate agents, dental professionals, nursing homes, accountants and lawyers, to name a few.

The firm has Martindale Hubbell's AV rating, and two of its member attorneys, Mark Gesk and Michael Magulick have been named Pennsylvania Super Lawyers.

With an extensive practice before all state and appellate courts in western and central Pennsylvania, as well as West Virginia and Ohio, the firm has a superior track record in the insurance industry. We look forward to seeing WIM at our future functions and on our various committees.

Member News continued.....

From MDWC&G

Philadelphia, PA— Four attorneys from the Workers' Compensation Department of the regional defense litigation law firm

Marshall, Dennehey, Warner, Coleman & Goggin (MDWC&G) have been asked by the Pennsylvania Chamber of Business & Industry to participate in their upcoming *Workers' Compensation and HR Records Retention Conference*, which was held in various locations throughout the state during June 2006.

James E. Pocius, Esq., in the Scranton, PA office, gave a presentation entitled: *Workers' Compensation Update* at all three locations— on June 8 in Pittsburgh, on June 15 in Harrisburg, and on June 27 in Valley Forge, PA.

Mary Kohnke Wagner, Esq., in the firm's Philadelphia, PA office presented the *Understanding Workers' Compensation Benefits* segment in Valley Forge, PA on June 27, 2006.

William J. Walls, Esq., in the Pittsburgh, PA office, presented the *Understanding Workers' Compensation Benefits* segment in Pittsburgh, PA, on June 8, 2006.

Finally, **Kacey C. Wiedt**, in the firm's Harrisburg, PA office, presented the *Understanding Workers' Compensation Benefits* segment in the Harrisburg, PA area on June 15, 2006.

Louis Bell, Esq., has been asked by the PA Bar Institute to participate in its May 25th seminar "Litigating the Upper Extremity Injury Case-Do's and Don'ts." Mr. Bell gave a presentation entitled: *Litigation Tips for the Defense: Minimizing an Injury to the Hand or Arm Before a Jury*.

Douglas J. Kent, Esq., gave a speech to the Philadelphia Chapter of the CPCU Society on *PA Personal Auto Law and Ethical Issues*.

King of Prussia, PA- **Daniel J. Sherry**, Esq., and **Craig A. Stone**, Esq., recently spoke at the Pennsylvania Bar Institute April 2006 seminar: "The Nuts & Bolts of the Medical Malpractice Case."

Mr. Sherry spoke at the Philadelphia session on April 27, 2006. His topic was opening speeches and he gave a demonstration of an opening based on a hypothetical set of facts. Mr. Stone's presentation took place in Mechanicsburg, PA, on April 19, 2006.

Mr. Sherry, in the firm's King of Prussia, PA office, concentrates his practice in health care liability litigation. Mr. Stone, who works in the Harrisburg office, concentrates his practice in defending health care liability litigation.

Robert J. Coleman, Esq., was recently elected to the Board of Republic First Bancorp, Inc. Mr. Coleman was also a co-founder and Director of the United Valley Bank and has served on the Board of Directors of Royal Bank of Pennsylvania and JeffBanks, Inc.

MDWC&G has been selected by A.M. Best Company to prepare Updates for the 2007 edition of *Digest of Insurance Laws for the State of Pennsylvania as published in Best's Directory of Recommended Insurance Attorneys and Adjusters*. This project was headed by Francis X. Wickersham, Esq. and **John J. Hare**, Esq., with research and writing assistance provided by law clerks **Lee C. Durivage**, **Nicole Camiso**, and **Corrine E. Amato**.

UPCOMING.....

July 19 & 20, 2006
Supervisory Management Seminar
West Shore Country Club
Camp Hill, PA

August 6-8, 2006
PAMIC/VAMIC Annual Convention
The Homestead Resort
Hot Springs, Virginia

September 27, 2006
Financial Management Seminar
Wyndham Hotel
Harrisburg/Hershey

October 11-13, 2006
Mid-Atlantic Insurance School
Brown, Schultz, Sheridan & Fritz,
Camp Hill, PA

November 8, 2006
Underwriting & Loss Prevention Seminar
Holiday Inn
Hershey/Grantville

December 8, 2006
IS Roundtable
Donegal Mutual Insurance
Marietta, PA

February 5 & 6, 2007
Mutual Insurance Days
The Hilton Hotel
Harrisburg, PA

March 15, 2007
Small Company Seminar
The Atherton
State College, PA

April 11 & 12, 2007
Claims Summit
Location: TBA

article or an announcement about your company in a future

Interested in having an article or an announcement about your company in a future edition of the **PULSE** News-letter ? We would love to hear "what's new with YOU!"

Please send your articles or announcements to :

Jeanne Thomas
PAMIC
1017 Mumma Road, Suite 103
Wormleysburg, PA 17043 or
e-mail us at: pmic@pamic.org