

PULSE newsletter

Pennsylvania Association of Mutual Insurance Companies

From the President



Last month PAMIC held its seventh annual Mutual Insurance Day in Harrisburg. Mutual Insurance Day’s purpose is to foster legislative awareness of the mutual property/casualty insurance industry, its problems and its prospects. Attendees have a good opportunity to meet with their state senators and representatives in a friendly and nonconfrontational manner. As members build confidence meeting with their legislators, PAMIC’s grassroots lobbying strength builds as well. PAMIC has home office operations in half of

Pennsylvania’s counties. That gives your association unparalleled lobbying potential. And as members become more comfortable meeting with their legislators that potential becomes a reality.

The Legislative Breakfast in the Capitol Building is always the highlight of the two-day event. This year the breakfast was on February 7. The breakfast was followed by individual appointments by constituents with their legislators. Both the breakfast and the appointments were exceptionally well attended. This year, over 65 legislators RSVPed to attend and it looked like many more than that attended. Veteran PAMIC attendees reported to me that this year’s dialogue with legislators was the most substantive and productive they have had yet. And I can attest that the later individual meetings were every bit as well received. Those meetings were our largest ever. 29 PAMIC members individually visited 37 legislators.

On the day before the breakfast, attendees heard a high-level presentation on market conduct by Dennis Shoop of the Pennsylvania Insurance Department. Michael Consedine of associate member Saul Ewing was our luncheon speaker on the same topic. Following lunch, NAMIC’s Joe Thesing gave useful training on the “dos and don’ts” of legislative contact. Finally I provided a legislative update, going through the major issues and talking points for the next day. There was a PAMIC PAC reception that evening, hosted by member Penn National Insurance on the top floor of its headquarters, with a spectacular view of the river.

Obviously all this activity made for a crowded two days. But the feedback I have received from attendees has been very enthusiastic. Perhaps more important, with the exception of the PAC reception for which there was an attendance charge, all of these events were free to all PAMIC attendees. The market conduct training, the

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ID STATEMENT

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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



In the January Pulse newsletter, PAMIC's president, Steve Elliott discussed the proposed bylaw changes that will be brought to the membership for consideration at the annual meeting. These new, proposed documents have been recently mailed to the membership.

PAMIC is preparing some

additional information to help the membership compare and contrast the old and new bylaws and will forward the information to the membership early enough for full consideration prior to the vote.

The need for a comprehensive review of the organization's bylaws were brought to light in the past year, as PAMIC addressed whether stock companies should be admitted as members. For instance, it was unclear as to how many members PAMIC actually had. Did subsidiaries of a company under common management count for one vote or two? Against this backdrop, counsel was asked to review both the bylaws and charter of the organization and make recommendations for modernization. Counsel was not directed to favor one point of view over another when it came to mutual and stock membership. As a matter of point, that issue is neutral in the proposed bylaw changes.

Several provisions in the current bylaws were eliminated, including a standing committee of the Small Company Caucus. That doesn't mean the committee can't or won't exist in the future, as the board of directors has the authority to authorize it, but it's best not to be structured into the corporate bylaws. The elimination of the provision which would allow any former PAMIC chair to attend any association meeting is proposed. As currently written, any former chair, even if he or she is not even affiliated with a member company, can attend any meeting, regardless of the sensitive nature of that meeting. Hence, you could have a former chair unaffiliated with a member company attending a meeting where hiring, termination or salary are being discussed.

By member request, a provision for proxy voting will be offered for consideration and adoption. Members have asked for the ability to vote at the annual meeting even when they cannot be physically present. This

should be a familiar concept, as many of our members utilize proxy voting for their election of boards of directors. I urge you to contact Steve Elliott with any specific questions you may have on the proposed changes.

Warmest regards,

Robert L. Lyon
President/CEO
Millers Mutual Group
2005—2006 PAMIC Chairman

From the President

(Continued from page 1)

lunch, the breakfast, the making of the appointments, etc., were without charge. PAMIC attendees understand the importance of grassroots lobbying and that is why they laid out time away from home and office and paid for a hotel room to attend. And your elected leadership values that attendance so much that no other additional costs charged. The active attendance is priceless. Needless to say, all this activity imposes significant costs on your association. So I am proud to recognize those members who, recognizing the importance of grassroots lobbying for our industry, helped make it all possible by very generous contributions: PA Lumbermen's, Mutual Benefit Group, Penn National Insurance, and NAMIC, our sister national trade association. I hope even more of you attend next year.

Government Affairs

NAMIC's Congressional Contact Program April 25 & 26, 2006

Special recognition goes to **Lehigh Mutual Insurance Company** for achieving 100% board participation at this year's Congressional Contact Program in Washington DC. It should also be noted that the Board at Lehigh Mutual realized 100% participation in the NAMIC PAC as well.

For more information on participating in the Contact Program, please call PAMIC at 717-303-0197

Donegal Insurance Co. v. Baumhammers

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On February 17, 2006, the Pennsylvania Superior Court issued an *en banc* opinion in *Donegal Insurance Co. v. Baumhammers*, 2006 PA Super 32 (2006). The opinion is lengthy – 62 pages – and contains several significant aspects, including “number of occurrences.” Despite the fact that Pennsylvania is a “cause of loss” state for purposes of “number of occurrences,” the court reached a “multiple occurrences” conclusion.

In 2000, Richard Baumhammers went on a shooting spree in which he killed five people and seriously injured one person. Baumhammers was convicted of five counts of first degree murder and other crimes. Litigation was commenced seeking damages from Baumhammers and his parents. The parents were allegedly negligent in failing to take Baumhammers’ gun and failing to advise authorities of his violent propensities.

The parents sought coverage under their homeowners policy issued by Donegal Mutual Ins. Co. and their umbrella policy issued by United Services Automobile Association (“USAA”). Both insurers commenced declaratory judgment actions claiming that they had no duty to defend or indemnify the parents. Addressing the consolidated declaratory judgment actions, the lower court determined *inter alia* that: (1) USAA had no duty to defend or indemnify parents; (2) Donegal had a duty to defend and indemnify parents; and, (3) the allegations implicated six (6) occurrences under the Donegal policy. Appeals to the Pennsylvania Superior Court followed.

The Pennsylvania Superior Court first addressed whether parents’ alleged negligence - which facilitated their son’s injury-producing intentional acts - constitutes an “occurrence.” The Donegal policy defines “occurrence” as “an accident, including continuous, repeated exposure to substantially the same general harmful conditions.” The court specifically rejected its prior holding in *Britamco Underwriters, Inc. v. Grzeskewicz*, 433 Pa. Super. 55 (1994) (finding no “accident” when insured’s negligence results in injury-producing intentional act) and adopted the Third Circuit’s rationale in *Nationwide Mutual Fire Ins. Co. v. Pipher*, 140 F.3d 222 (3d Cir. 1998). The *Pipher* court held that “negligence leading to intentional acts may nevertheless be considered an ‘accident’.” The court found that coverage exists for the parents’ alleged negligence, notwithstanding that the injuries were caused by Baumhammers’ intentional acts.

The court then addressed the number of occurrences implicated under the Donegal policy. Applying the “cause of loss” approach, “an inquiry is directed into whether there was ‘but one proximate, uninterrupted, and continuing cause which resulted in all of the injuries and damage’.” Citing *Gen. Accident Ins. Co. v. Allen*, 708 A.2d 828, 833 (Pa. Super. 1998). The court noted that there were two proximate causes for the injuries: (1) Baumhammers’ attacks and (2) his parents’ negligence. Due to the lack of Pennsylvania authority on multiple causes, the court reviewed decisions from other jurisdictions. Presented with a split in authority, the court was persuaded by the rationale set forth by courts finding “multiple occurrences.” Those courts focused on the “immediate cause of the harm, the cause that ultimately triggered the liability of the insured.” Citing *Koikos v. Travelers Ins. Co.*, 849 So. 2d 263 (Fla. 2003). In *Koikos*, a restaurant’s allegedly negligent security resulted in the shooting of several people. Focusing on the injury-producing act, the *Koikos* court found “multiple occurrences.” The shootings gave rise to the injuries, not the insured’s negligence. The injury-producing act is seen as an “intervening cause which breaks the chain of causation allowing for more than one occurrence.” Citing *H.E. Butt Grocery Co. v. Nat’l Union Fire Ins. Co.*, 150 F.3d 526 (5th Cir. 1998) (Applying Texas Law).

Adopting this rationale, the court determined that there were multiple “occurrences” under the Donegal policy. Although the “accident” was the parents’ negligence, the shootings ultimately caused the injuries. The court rejected Donegal’s argument that parents’ negligence constituted a “continuous or repeated exposure to the same general harmful conditions” because the victims were not “exposed” to parents’ negligence. The court also distinguished *Appalachian Ins. Co. v. Liberty Mut. Ins. Co.*, 676 F.2d 56 (3d Cir. 1982) because it did not concern a multiple causation situation. Although *Appalachian* concerned allegations of employment discrimination by a number of female employees, all of the alleged harm stemmed directly from the “implementation of the discriminatory policy” without any “intervening cause.”

Due to Baumhammers’ intervening intentional acts, Parents’ negligence gave rise to six separate occurrences. Given Donegal’s \$300,000 per occurrence limit of liability, the potential indemnity exposure is \$1.8 Million.

See *Germantown Ins. Co. v. Martin*, 407 Pa. Super. 326, 333, 334 (1991).



Education Update

PAMIC Insurance School

**INS23
Commercial
Insurance**

**May 10—12
Wormleysburg, PA**

Three days of intense classroom instruction taught by experienced industry trainers. Tuition is only: \$495 for PAMIC Members and \$595 for non-members!

Register Today!

PAMIC

AAIS Farm Seminar

This AAIS Farm Seminar is presented by Fred M. Macy, CPCU, one of the most active AAIS Farm instructors in the nation! Macy has presented his Gray Wolf Insurance Seminar for Farms since 1996 and has had more than 5,000 attendees. He has tailored this presentation to members of PAMIC, covering Pennsylvania as well as Virginia and West Virginia.

May 24—25, 2006

**Lancaster Host Resort and Conference Center
Lancaster, PA**

Day One

8:00 - 5:00

*Farmowners Policy
Includes a technical
review of the forms FO 20,
Additional Policy
Conditions, FO 2 and FO
3, Dwelling Forms, FO 6,
Farm Property Form for
Buildings, Scheduled and
Unscheduled Farm
Property, GL 2, Farm
Personal Liability, GL 610
Farm Commercial
Liability.*

Day Two

8:00 - 4:30

*AAIS Farmowner Policy
Endorsements, Farm
Personal and Commer-
cial Umbrellas and the
AAIS AG OP program.*

Seminar Price:

\$430 Members

\$530 Non Members

*Price includes Farm Seminar
Workbook as well as
Continental Breakfast and
Lunch both days!*

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

Sponsors

**PAMIC 2006 Claims Summit
April 4—5, 2006**

**PAMIC would like to thank
the following sponsors for helping to make the
2006 Claims Summit possible.**

Gold Sponsors

- **American Reinsurance Company**
- **Andracki Law Offices, PLLC**
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- **Meyer, Darragh, Buckler, Bebenek & Eck, PLLC**
 - **McShea Associates Inc.**
 - **Stackhouse Adjustments**
- **Thomas, Thomas & Hafer, LLP**



**COMING
JUNE 20, 2006!**
Specialty Coverages Seminar
Covering
Equipment Breakdown and
Business Income Interruption

Feature Article

Flood-Damaged Cars from Hurricane Katrina May Show up on a Used Car Lot Near You

The I.I.I. Offers Tips to Avoid Buying a “Flooded Car”

INSURANCE INFORMATION INSTITUTE

110 William Street New York, NY 10038
(212) 346-5500 www.iii.org

NEW YORK, March 2006—An estimated 500,000 cars were damaged by hurricanes last year. Unfortunately, many of these vehicles have been purchased by dishonest auto dealers, cleaned up and then sold, with their flood damage history illegally hidden, according to the Insurance Information Institute (I.I.I.).

Unscrupulous salvage operators and dealers often try to conceal the fact that the vehicles they are selling have been damaged by a natural disaster, according to the National Insurance Crime Bureau (NICB).

To prevent this type of fraudulent resale of cars to unsuspecting consumers around the country, the NICB has been helping law enforcement groups and insurance companies identify and catalogue vehicles damaged by the 2005 hurricanes.

“By creating a registry of damaged vehicles that consumers can access when purchasing a used car, the potential for this type of fraud can be greatly reduced,” said Robert M. Bryant, president and CEO of the NICB.

The NICB has compiled a database of vehicles affected by Hurricanes Katrina, Rita and Wilma, which offers a free search of any car’s vehicle identification number (VIN), so used-car buyers can learn more about the history of the car and whether it has been involved in a claim related to Hurricane Katrina. Consumers can access this service from the NICB home page (<http://www.nicb.org>).

“To avoid inadvertently purchasing a flood-damaged car, it is important that you only buy a used car from a reputable dealer, have a certified mechanic look for flood damage and check the car’s VIN number,” noted Jeanne M. Salvatore, senior vice president and consumer spokesperson for the I.I.I.

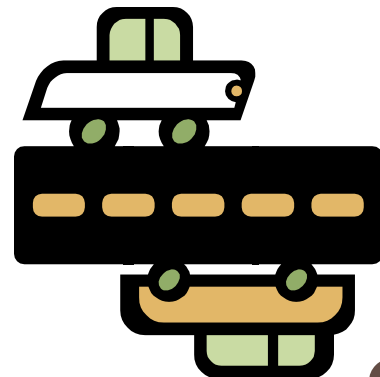
The I.I.I. suggests you be on the lookout for the following indicators that a car may have been flooded:

- ◆ Mildew, debris and silt in places where it wouldn’t normally be found, such as under the carpeting in the trunk, or around the engine compartment
- ◆ Rust on screws and other metal parts
- ◆ Waterstains or faded upholstery; discoloration of seat belts and door panels
- ◆ Dampness in the floor and carpeting; moisture on the inside of the instrument panel
- ◆ A moldy odor or an intense smell of Lysol or deodorizer being used to cover up an odor problem

If consumers suspect that their local car dealer is committing fraud by knowingly selling “flooded cars” as regular used cars, they should contact their insurance company, local law enforcement agency or the NICB at 800-TEL-NICB.

Cars damaged by flooding, fire or wind are covered under the comprehensive portion of an auto insurance policy, according to the I.I.I. A VNR, “Flooded Cars,” can be viewed at <http://www.iii.org/static/video/mediaplayer/katrinacars.wmv>.

The I.I.I. is a nonprofit, communications organization supported by the property/casualty insurance industry.



Feature Article

Poor Management Responsible for Lower Productivity

Steven M. Horner, Horner & Associates

In the *2005 Workplace Productivity Survey* conducted by the Society for Human Resource Management, workers indicated that the number one factor that negatively impacts productivity is poor management.

The survey polled a sample of 478 human resource professionals and 613 employees to collect information about workplace productivity. The survey examined several components of the workplace that impact productivity to determine their effect on worker productivity.

The survey asked employees, "Which of the following factors negatively impact your productivity at work? (Check all that apply)" Responses were as follows:

- Poor management (58%)
- No longer being motivated by the work (38%)
- Organizational changes (26%)
- A lack of defined goals in the job (24%)
- Readiness to leave organization (16%)
- Lack of accountability in the job (13%)
- Pressure by management to show face time (12%)
- Other (16%)

If we were to assume that poor management negatively impacts productivity by a "conservative" 10%, the result would be:

- On a weekly basis a loss of about one half day per employee
- On a monthly basis a loss of about two days per employee
- On an annual basis a loss of about 25 days per employee

If we were also to assume that the average manager has a span of control of 6 employees, this means that one ineffective manager is losing:

- On a weekly basis 3 days of productivity
- On a monthly basis 12 days of productivity
- On an annual basis 150 days of productivity

When employees indicate that their manager is hampering productivity, management should be taking a very close look at the following:

- Selection/promotional process for supervisors and managers (Does the best technician tend to get promoted?)
- Training programs for supervisors and managers (Is there a structured training program in place?)
- Organization structure (Are the right names in the right boxes?)
- Rewards (Is effective management and leadership recognized and rewarded?)

The challenge is that the typical employee is usually extremely reluctant to voice their concerns about management, to management. The fear of retribution is a very powerful deterrent to open and candid communications. The result is that in most organizations senior management is probably not aware of the impact that an ineffective manager is having on the organization. If the employees feel that they can discuss their concerns confidentially they usually provide very valuable insight.

One approach to obtaining this feedback, while maintaining confidentiality, is through an employee survey. The survey needs to be well designed and there needs to be a structured follow-up process in place that would analyze the data, communicate the results to all stakeholders, address valid issues and concerns, and communicate progress. Other sources of data include exit interviews, Town Hall meetings, round tables, and focus groups, but in these cases anonymity is not provided.

Many organizations do a great job of obtaining customer feedback to improve products and services. Shouldn't they also be obtaining feedback from their employees on a regular basis to identify opportunities to continuously improve the organization from the employee's perspective?

Member News

From Bedford Grange

March 13, 2006—PAMIC Board member Gary R. Miller has announced his resignation as President of Bedford Grange Mutual Insurance Company, effective March 31, 2006. He will work for the EMC Group in the State of North Carolina. He believes that this will be an opportunity for him and his family to pursue and achieve new goals. Gary began his career at Bedford Grange in 1991.

The Bedford Grange Board of Directors has appointed one of their own, Rick Barefoot, to serve as the interim President of the Company effective April 1, 2006. Mr. Barefoot is an extremely capable local businessman.

From MDWC&G

King of Prussia, PA – Stephen A. Ryan, Esq., of the regional defense litigation law firm Marshall, Dennehey, Warner, Coleman & Goggin (MDWC&G), was a panelist at a symposium sponsored by Temple Law School's Journal of Science, Technology and Environmental Law entitled *The Open Source Model – Towards Life Saving Drugs and Beyond*. This CLE program drew a national audience, panelists included law professors from around the country who specialize in Intellectual Property Law. The topic relates to proposals to make patented drug formulas available without fee – similar to what has been tried with computer software – to foster downstream innovation and greater accessibility to life saving drugs. Mr. Ryan addressed the cost of new drug research and development and the cost of after-market tort liability as significant obstacles to the feasibility of these proposals.

Mr. Ryan, a shareholder in MDWC&G's King of Prussia, PA office, is a member of the firm's Health Care Liability Department and Co-Chair of its Medical Devices & Pharmaceutical Litigation Practice Group.

King of Prussia, PA – Daniel J. Sherry, Esquire, Steve W. Day, Jr., Esquire, and Donna Modestine, Esquire of the regional defense litigation law firm Marshall, Dennehey, Warner, Coleman & Goggin (MDWC&G), recently spoke to the nursing staff at Woman and Babies Hospital, part of the Lancaster General Hospital System, in Lancaster, PA. They spoke on deposition preparation, nursing/medical documentation, and communication "do's and don'ts" prior to and after litigation commences.

Mr. Sherry, a shareholder, concentrates his practice in health care liability litigation. Mr. Day, also a shareholder, is Chairman of the firm's Long-Term Care Practice Group and concentrates his practice in defending nursing home, assisted living facilities, and other long-term care entities. Ms. Modestine, an associate, is a member of the firm's Health Care Liability Practice Group.

Philadelphia, PA – David J. Shannon, Esquire, of the regional defense litigation law firm Marshall, Dennehey, Warner, Coleman & Goggin, recently served as a faculty member of the continuing legal education seminar entitled *Technology Law in Pennsylvania: The Fundamentals and More*. Mr. Shannon's speech focused on understanding copyright, trademark and trade secret law.

Mr. Shannon is an associate in MDWC&G's Philadelphia office. He concentrates his practice in the areas of intellectual property and civil litigation involving copyright and trademark matters, e-commerce, and commercial litigation. He has written numerous articles on Intellectual Property and e-commerce legal issues and serves as the Pennsylvania Bar Association's Intellectual Property Law Section's Vice Chair

Optical Image Technology, Inc. Software Firm Partners with Town & Country Computer Services, LLC.

State College, Pa. – March 23, 2006 – Optical Image Technology, Inc. (OIT), producer of DocFinity® Software, proudly announces a software partnership with Town & Country Computer Services, LLC, of Schenectady, NY.

Town & Country Computer Services' main software product, The INSURANCE PROCessing System (INSPRO™), was designed for, and is used by, smaller to mid-size insurance firms. Integrating the DocFinity Core (an electronic document management system—EDMS), as Panhandle Farmers Mutual Insurance Company has done with their INSPRO system, gives companies the tools to generate more premium volume and compete in the marketplace due to their improved efficiency. The DocFinity Imaging System, part of the DocFinity Core software, provides for the easy scanning, imaging and retrieval of insurance documents.

DocFinity Software and INSPRO integrate seamlessly, and users require a minimal amount of staff training before fully utilizing the integrated system. The benefits of the partnership between Town & Country Software and DocFinity will enable Town & Country customers to streamline their processes, dramatically reduce both paper and file cabinet storage and, perhaps most importantly, process work faster. Power and speed will be at the hands of the company underwriters and claim processors to quickly access policy holders' information.

"Our mutual insurance clients will benefit greatly from this relationship" noted Bruce Hering, Town and Country's founder and senior executive. "By integrating INSPRO with the DocFinity Core, documents can be accurately indexed with a minimum of key strokes and retrieved with a mouse click while processing insurance transactions. We are pleased to be able to bring this extra value to our current and future users."