

SPRING 2010

International Claim Association

Ica news



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ICA CALENDAR



MAY 5-7, 2010
Spring Meeting
Marco Beach Ocean Resort
Marco Island, Florida



OCTOBER 3-6, 2010
Annual Education Conference
Renaissance Austin Hotel
Austin, TX



OCTOBER 2-5, 2011
Annual Education Conference
Las Vegas, NV



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ICA NEWS

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President's Remarks

Marlon D. Nettleton
FLHC, FLMI, FFSI, CLU, ChFC, HIA, ACS
State Farm Insurance Companies

I've been attending the ICA Annual Education Conference for many years. Every year I leave that meeting thinking it's the best one I've attended and doubt that it can be topped. We have received outstanding reviews and comments about our Annual Education Conference last October on Marco Island.

I've just returned from our Committee Meetings in Las Vegas where most of the preliminary planning occurs for the Annual conference which will be in Austin, Texas October 3-6. Our volunteer committees have done an outstanding job preparing for another

phenomenal meeting. In addition to a great keynote speaker, there will be approximately 60 workshops and roundtable discussions of which you can only attend 7 due to limiting the conference to 2 days. That means 8 people can attend from your company and you'll still not be able to benefit from all the sessions offered!

Our Austin meeting will once again be one of our best! Plan on attending and bring several of your co-workers with you!

ICA is a very dynamic organization and as such, we are in the process of making numerous changes to better serve our members. I look forward to sharing these enhancements as we progress through this year.

We appreciate your support and suggestions.

Look forward to seeing "Y'all" in Austin. ■



Law Enforcement Inquiry (LEI)

David W. Grannan, CFE, *Golden Rule Insurance Company*

Our periodic report on the successes of the Law Enforcement Inquiry (LEI) service that we provide law enforcement is as exciting as ever. To date (03-04-2010) we have received an all time record high number of 70 Inquiries. We are almost doubling the numbers from 2008 and 2009, which were 38 and 46 respectively for the same period.

Recently, I received a series of e-mails regarding three different Law Enforcement Inquiries.

The first was from Bonnie Millican an analyst with the Florida Department of Law Enforcement. She wanted to thank the ICA for the service they provide regarding the LEI service. She wanted to also report that within 24 hours after ICA sent out the LEI (10-0067) she received a call from an insurer responding positively to her request. Ms. Millican stated the insurer did have an active policy, but they now think the policy was not a contributing factor to the person's death. Regardless, law enforcement now has additional information they can work with in their investigation.

The second e-mail came from one of our Association members. The member wanted to share a success his company had regarding LEI (10-0068). To read the story regarding that interesting investigation please go to:

<http://www.explorebaltimorecounty.com/news/104907/police-allege-hess-murder-for-hire-had-price-9000/>

The third e-mail I received came from another one of our member companies. That person wanted to also share a success story regarding LEI (10-0037). To read the entire article regarding that interesting investigation go to:

<http://www.palmbeachpost.com/news/crime/wellington-man-accused-of-shooting-wife-and-two-193236.html>

I continue to believe this system is the most effective way for law enforcement and the insurance industry to communicate and work side-by-side.

Keep up the good work and I will continue to report the successes I am made aware of. Be sure to share the service with any law enforcement officer you come in contact with. ■

International Claim Association

ICA Committee Reports

FRAUD AND CLAIM ABUSE COMMITTEE

The Fraud and Claim Abuse Committee had its organizational meeting on January 5, 2010. Nine members attended the conference call. We have planned another session for January 19 or 20.

Topics discussed were:

- Welcome to new members Daniel Marsano and Kerry Reyes
- Timeline
- Speakers
- Articles
- Attendance at Las Vegas Meeting looks to be seven to nine members.

We have identified three possible articles for publication with a possibility for 1 more for the annual meeting.

Eight workshop sessions were discussed with the assignment being given to all to be prepared to come back for the next meeting with more ideas for sessions and articles.

Committee members again brought up the hope that the sessions that are put on for our committee could be somehow validated as sufficient to satisfy the requirements of the various states for SIU and Anti-Fraud training.

Last year was another very active year for the Law Enforcement Inquiries. The number at year end stood at 277 which far surpassed our most active year previously.

Our committee currently has 18 members including Dave Grannan who is the LEI Coordinator. ■

Walter M. Boyd, ALHC, JD
New York Life

LAW COMMITTEE

The Law Committee is excited about its 2010 agenda! The committee will be preparing its annual law report on divorce and beneficiary. This topic has not been updated since 2003. It is anticipated that there have been new statutory and case law developments in this area. The Law Committee will also prepare a 50 state survey on whether a formal court declaration is required when an insurer rescinds a contract.

The committee plans to host five workshops at the Annual Education Conference in Austin, Texas this fall. Look forward to a session on giving trial and deposition testimony and presentations on rescission and misrepresentation, bad faith under the unfair claims practices acts, the duty of the insured to cooperate in an investigation, and the attorney-corporate client privilege. We look forward to seeing everyone then! ■

Co-chairs

David Koth, JD, ALHC, CLU, ChFC, FLMI, CPCU
State Farm Insurance Companies

Annette M. Tephly, JD, FLHC, FLMI, AAPA, ARA
Modern Woodmen of America

LIFE COMMITTEE

The Life Committee had a very productive winter meeting in Las Vegas with nearly all members in attendance. Our new members have really embraced their responsibilities without reservation, and the introduction of new ideas and perspective is giving us a shot in the arm.

Our members have 22 sessions planned for the annual conference with some brand new topics, some repeat performances, and some new twists on existing issues. We've reached out to some other committees for assistance, and they have willingly jumped on board to lend their expertise. Thanks in advance to members of the Law, Fraud, and Disability Committees.

Of particular note also is the fact that we have new committee representation from Manulife, a Canadian life insurance company, so we will have that much needed international flavor in the mix at this year's conference.

Last year's conference is a tough act to follow, but we are confident that our fresh ideas and the expertise of our committee members will again provide truly useful information to the conference attendees. ■

Erin Worthington, ALHC, ACS
Allstate Financial



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Education Program Coordinator

David Abts

TEST YOUR KNOWLEDGE

Claim Q&A

Questions provided by the ICA Education Committee

1. Susan Jones was recently diagnosed with a neuromuscular disorder that is marked by loss of muscle strength because of the inability of neurotransmitter (acetylcholine) to transmit impulses from the nerve cells to muscle cells. What is her pathological condition?

- a. Huntington disease
- b. Parkinson disease
- c. Myasthenia Gravis
- d. Multiple Sclerosis

The Language of Medicine, Davi-Ellen Chabner, Seventh Edition Page 369.

2. Coverage may be provided under LTC (long term care) insurance policies. Several kinds of long-term medical care include:

- a. nursing home care
- b. home health care
- c. adult day care
- d. activities of daily living
- e. all the above

Claim Administration Principles and Practices, Lightcap Brown, Herrod, Maxwell, Third Edition, pg 293.

3. Fraud has several components. Most states define fraud as having the following characteristics:

- a. It is made with an intent to deceive
- b. It is material

- c. It does not cause injury
- d. It is justifiably relied upon by the victim
- e. a, b, and d only.
- f. All of the above

Life and Health Insurance Law, McCann Page 325.

4. A Manager is provided tools for comparing the performance of employees to arrive at equitable decisions regarding merit pay increases and promotions. A (simple ranking method) (alternation ranking method) requires a manager to rank every employee from best to worst on a specified behavior or group of behaviors.

- a. Simple ranking method
- b. Alternation ranking method

Management Claim Department Operations, Lightcap, Pages 320.

5. Clara was 34 weeks pregnant, experiencing bad headaches, a 10 pound weight gain in 2 days, and blurry vision. Her doctor told her to go to the Obstetrical ER because she suspected.

- a. Preeclampsia
- b. Pelvis inflammatory disease
- c. Fibroids

The Language of Medicine, Davi-Ellen Chabner, Seventh Edition Page 276.

Answers: 1[c] 2[e] 3[e] 4[a] 5[a]

Committee Chairs

Administrative Management Committee

Karen Riendeau, FLHC, ARA, ACS
Munich American Reassurance Company

Annual Conference Team

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Modern Woodmen of America

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Munich American

Robert Leveque
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Fraud and Claim Abuse Committee

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New York Life

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Keith Winfield, FAHM
CareSource

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Modern Woodmen of America

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Erin Worthington, ALHC, ACS
Allstate Financial

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Modern Woodmen of America

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Golden Rule Insurance Company

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Co-Chairs

Mary Beaufait, ACS, AIRC, ARA
Hanover Life Reinsurance Company

Lucille Chatham
Munich Re Group

Ica

CROSSWORD PUZZLE CLUE (see pages 10-11)

Past Presidents in Attendance at 100th Anniversary Conference

Alfred S. Hammond..... 1970	Vonna L. Stoker..... 1998
Terry C. Klas..... 1986	Gary C. Johnson..... 1999
Charles N. Snow..... 1988	Franklin L. Best..... 2003
Shirley B. Smith..... 1990	William W. Wade, Jr..... 2004
Curtis B. Wilbanks..... 1991	Mark A. Langenfeld..... 2006
W. J. West..... 1992	Rebecca L. Huerta..... 2007
Marty Renninger..... 1996	Jack L. Price..... 2008
James F. Adams..... 1997	

Insurer Must Notify Insured of Contractual Time Limitation

E.J. Kim, Gordon & Rees LLP

RECENT
NEWS

The California Court of Appeal in *Superior Dispatch, Inc. v. Insurance Corporation of New York*¹ reached a conclusion that may have implications for claims professionals handling claims in California. Specifically, the court concluded that after a claim is made, insurers must notify first party claimants of any contractual limitation provisions and other policy provisions that may apply to the claim, even if the claimant is represented by counsel. Failure to do so may preclude the insurer from relying on the undisclosed provision.

BACKGROUND AND TRIAL COURT DECISION

This case involves a cargo coverage policy The Insurance Company of New York (“Inscorp”) issued to a commercial trucking company Superior Dispatch, Inc. (“Superior”). The policy included a one-year contractual limitations provision.

Superior submitted a claim to Inscorp in connection with damaged cargo. Inscorp denied the claim. Superior’s attorney then communicated with Inscorp, contesting the insurer’s coverage position. Inscorp continued to decline coverage, and eventually Inscorp sued.

Inscorp defended the suit, in part, on the grounds that Superior failed to comply with the one-year contractual limitation provision. Superior argued Inscorp was estopped (i.e. precluded) from relying on this provision because Inscorp failed to notify Superior or its attorneys of this contractual limitation when Inscorp denied Superior’s claim.

The trial court concluded Inscorp was under no obligation to disclose the provision to Superior, and dismissed the suit. Superior appealed.

THE COURT OF APPEAL’S DECISION

The Court of Appeal concluded Inscorp was required to disclose the contractual limitations provision pursuant to regulations promulgated

by the California Department of Insurance; specifically, California Code of Regulations, Title 10, Section 2695.4(a).² This regulation requires insurers to notify first party claimants or beneficiaries of “... all time limits or other policy provisions that may apply to the claim.” The Court of Appeal concluded this regulation includes contractual time limits and since Inscorp failed to disclose the one-year contractual limitations provision in its policy, Inscorp could not rely on this provision to deny Superior’s claim.

Inscorp argued section 2695.4(a) did not apply because another more specific regulation governed disclosure of contractual time limits. Specifically, Inscorp argued Section 2695.7(f) should apply.³ This regulation requires insurers to notify claimants of any “statute of limitation or other time period requirement upon which the insurer may rely to deny a claim.” This regulation only applies, however, to unrepresented claimants. Since Superior was represented by counsel, Inscorp argued it was

under no obligation to notify Superior or its attorney of the contractual time limitation.

The Court of Appeal disagreed. It found both regulations must be given concurrent effect. Thus, once a claim is submitted, insurers must timely notify claimants of all contractual limitations even if these provisions are conspicuously located in the policy or the claimants are represented by counsel. Insurers who fail to do so may be barred from relying on any undisclosed provisions.

The court went on to resolve the case in Inscorp’s favor, however. It concluded Superior had made a material misrepresentation in its insurance application, which voided coverage altogether.

The impact of the *Superior Dispatch* decision is not yet known. Nevertheless, out of an abundance of caution, claims professionals should carefully review their communications with claimants to ensure all pertinent policy provisions are disclosed. ■

¹ (January 21, 2010) 10 C.D.O.S 909

² Section 2695.4(a) states: Every insurer shall disclose to a first party claimant or beneficiary, all benefits, coverage, time limits or other provisions of any insurance policy issued by that insurer that may apply to the claim presented by the claimant. When additional benefits might reasonably be payable under an insured’s policy upon receipt of additional proofs of claim, the insurer shall immediately communicate this fact to the insured and cooperate with and assist the insured in determining the extent of the insurer’s additional liability.

³ The relevant portion of Section 2695.7(f) states: Except where a claim has been settled by payment, every insurer shall provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim. Such notice shall be given to the claimant not less than sixty (60) days prior to the expiration date; except, if notice of claim is first received by the insurer within that sixty days, then notice of the expiration date must be given to the claimant immediately. ... This subsection shall not apply to a claimant represented by counsel on the claim matter.

Roundtable Conference Calls

The Quarterly ICA conference calls are scheduled to be held on the following days. Watch for topics to be announced in future ICA Newsletters and on the ICA website. Be sure to sign up for the next call this year to be held on May 19th.

All of the Roundtable calls are scheduled for Wednesdays at 2 pm in the eastern time zone.

May 19, 2010.....Disability
August 18, 2010Law
November 17, 2010.....Life

The “Q” in Quality Assurance

OPINION

*Harriett Frizie, Munich American Reassurance Company
Fred W. Gosman III, F.W. Gosman & Company*

The contents of this paper are not for public dissemination. They are solely the opinions of the authors and should not be construed as a publication of Munich American Reassurance Company, F.W. Gosman & Company, or any of their employees, officers, directors, representatives, affiliates, parents, or divisions.

In developing products and services, Quality Assurance (QA) is any systematic process of checking to see whether a product or service being developed is meeting specified requirements. Many companies have a separate department devoted to quality assurance. A quality assurance system is said to increase customer confidence and a company's credibility, to improve work processes and efficiency, and to enable a company to better compete with others.

While QA dates back to the building of the great pyramids, QA as we know it was initially introduced in World War II when munitions were inspected and tested for defects after they were made. Application of statistical control came about as a result of World War production methods. Quality management systems are the outgrowth of work done by W. Edwards Deming, a statistician, after whom the Deming Prize for quality is named.

The American Society for Quality (ASQ), formerly known as American Society for Quality Control (ASQC), is a knowledge-based global community of quality control experts, with nearly 85,000 members dedicated to the promotion and advancement of quality tools, principles, and practices in their workplaces and in their communities.

Established in 1946 and based in Milwaukee, ASQ traces its beginnings to the end of World War II, as quality experts and manufacturers sought ways to sustain the many quality-improvement techniques used during wartime. ASQ has played an important role in upholding these standards from the past while championing continued innovation in the field of quality.

In the 1980's, ASQ members began to see how quality could be applied beyond the world of manufacturing. Quality, they realized, could make a difference in any organization and touch

every person. Because of this, the idea of quality began to morph into a much broader discipline aimed at leading, inspiring, and managing a broad range of businesses and activities, with a focus on excellence.

A more traditional definition of QA would be all the planned or systematic actions necessary to provide adequate confidence that a product or service will satisfy given needs. [Source: ASQ Statistics Division, Glossary & Tables for Statistical Quality Control, 1983]. However, QA has been expanded to include modalities that foster improvement in the efficiency and effectiveness of services.

QA has come to represent a broad concept that focuses on the entire quality system, including suppliers and consumers of the service, and includes all activities designed to produce services of appropriate quality.

Quality control (QC) differs from QA in that QC has a narrower focus on error-free consistency. Quality management is the totality of the assorted functions involved in the determination and achievement of quality, which includes quality assurance and quality control.

As defined in the American Heritage Dictionary, quality is an inherent or distinguishing characteristic, a degree or grade of excellence. Business dictionary.com defines quality as the measure of excellence or the state of being free from defects, deficiencies, and significant variations. There are many definitions of quality, not only including subjective definitions but also the perspective of quality. Entire industries of consultants and advertising agencies have been created to help define quality in slogans, commercials, and campaigns. Buzzwords are thrown about to the point they become clichés.

The word “quality” can be defined as the properties of services that are valued by the consumer. This in turn begs the question – who is the consumer? Consumers of our services are both internal, such as management and financial reporting functions, and external, such as policyholders, rating agencies, and statutory bodies. Each of these consumers would have a slightly different perspective of what constitutes quality

and deserve inclusion in the definition of what constitutes quality.

QA occurs in four domains:

- structure,
- process,
- service effectiveness, and
- customer satisfaction.

Structural characteristics and standards are most often relied upon in a QA process. Structure refers to the organizational context within which services are provided, in that the structure of the organization provides the capability to provide good quality services.

Although explicit process standards are used less often in a QA process, they are very important. Process refers to how services are provided and are typically assessed by comparing what is done to a set of external standards. For example, certain types of case managers may have certain minimal performance expectations.

A critical step is to assure the accuracy and adequacy of information used in the QA process. Standardized record review audit checklists are used by quality specialists, QA managers, or whatever position title is applied. Quality standards related to effectiveness and satisfaction are used less often, due to the lack of mechanisms for processing such feedback. However, these aspects of QA can provide some of the best perspectives on quality.

Various aspects of quality need to be measured in a QA process. Measurements can be done based on internal standards as well as external standards. For example, claim census and operational budgets can be used as internal standards. These may include the following measures:

- quantity of claims
- average time responses, depending on statutory requirements or internal claims administration policies
- weighting system for different types of claims, considering types of coverage, disability, and occupation as well as expected claim duration, litigation status, and claims history

- quantity of benefit payments
- number of work hours
- other measures captured in the claims management system, including coverage type, age, gender, benefit period, elapsed time on claim, benefit amount, elimination period, rider coverages, etc.

Benchmarks and policyholder satisfaction results can be used as external standards, such as the quantity and outcomes of complaints or summaries of feedback received from co-workers and/or policyholders.

Financial measures usually appeal to both internal and external customers. Further, Sarbanes-Oxley has required a thorough review and examination of all major risk assessments and processes, including claim departments and information systems. Sarbanes-Oxley also requires that an assessment and monitoring process be put in place so that if underlying assumptions change - for example, if disability claims escalate - the information will be captured and used immediately. QA in terms of financial measures can include the following items:

- budgets and projections,
- relative weighting of data elements,
- expenses analysis, including variations (both over and under) from expected amounts, and
- goals

Several management techniques are commonly used in QA, such as the following styles:

- Six Sigma and Lean Six Sigma
- Benchmarking
- Business Process Improvement (BPI)
- Total Quality Management (TQM)
- Business process reengineering, also known as BPR, Business Process Redesign, Business Transformation, or Business Process Change Management
- and Hoshin Kanri

The basis for most QA techniques is to enhance more fact-based decision making and are often linked to process capability studies. In turn, the financial benefits of a project are captured, tracked, and measured to produce a cost-benefit analysis for the project.

Critics of the Six Sigma-type approaches say that they are narrowly designed to fix an existing process, allowing little room for new ideas or an entirely different approach. Much of the managerial time and effort is devoted to reducing rates of mistakes rather than on coming up

with new, innovative products or techniques. Any particular management technique needs to be blended with complementing techniques to form an effective QA process.

For any QA program to be effective within an organization, several key areas have to be given consideration:

QUALITY AWARENESS

Awareness of quality issues throughout the organization is essential in order to ensure that product quality will be taken into account at every stage of the business process. The company-wide quality approach places an emphasis on four aspects:

1. Elements such as controls, job management, adequate processes, performance and integrity criteria and identification of records
2. Competence such as knowledge, skills, experience, qualifications
3. Soft elements, such as personnel integrity, confidence, organizational culture, motivation, team spirit and quality relationships
4. Infrastructure (as it enhances or limits functionality)

ESSENTIAL ELEMENTS OF ESTABLISHING QA

An internal environment conducive to initiating, expanding, and sustaining QA is necessary to have an effective QA program. While establishing the QA procedures, it is very important to involve all stakeholders. Each department from design to sales, production to purchase, should be involved. This is required since quality is everybody's responsibility. Such an enabling environment includes the following elements, each important individually, but also supportive of each other in a synergistic fashion:

Policy: written policies that support quality through clear, explicit, and communicated directions/directives and provide support, guidance, and reinforcement for QA as an integral part of the organization

Leadership: leaders who work directly and openly to improve quality by setting priorities, modeling core values, promoting a learning atmosphere, acting on recommendations, advocating for supportive policies, and allocating resources for QA

Core values: organizational values are articulated, promoted, and practiced. These values emphasize quality of care, ongoing learning, and continuous improvement of services

Resources: sufficient allocation of human

and material resources for conducting, supporting, and maintaining QA activities

QA requires more than a technical approach of tools and methods. Sustained improvements often require a change in attitude and sense of ownership for the quality of services provided by an organization. Many supporting factors are required to integrate QA into the structure and function of an organization:

- Establish quality assurance procedures and policies. Written documentation will form the basis of your company's quality assurance manual.
- Take a fresh look at your claims operation end to end, and identify every function and activity that affects the quality of your product or services.
- Create procedures to spot errors as early in the claim process production as possible. Decide which records and reports will be required to track all steps of the claim process to identify existing and potential problem areas.
- Assign responsibility for administration and supervision of the various stages of your quality control program.

COMMUNICATION OF QA EFFORTS

Communication is necessary within an organization to ensure that a QA program is successful. The establishment of formal procedures to assure the communication of new standards, policies, and improvement activities increases the likelihood of acceptance of and compliance with such initiatives. Communication reinforces the notion that QA is everyone's business. Successes should be shared, and lessons can be learned (and shared) when things do not go as well as planned.

Successful communication support for QA includes:

- **Recording** improvements and changes, illustrated by data to demonstrate results that have been achieved and by the stories behind these results.
- **Sharing** what has been achieved and how it was done, both with the organization's staff and the community it serves, as well as with others who might learn from it and become motivated to improve their own services.
- **Using the results** for advocating policy changes. When activities are well documented with supporting data, it is easier to convince decision makers.

MAINTAINING QA RESULTS

Once the organization achieves its set quality goals, the final step should be to maintain it consistently. This can only be possible if the changes made to achieve the target have been made part of the quality systems and are reviewed periodically.

In order to maintain a QA program, the organization must be willing to view their resources as a set of assets that can change and adapt to the needs of their customers. The organization can then leverage their resources to manage their customers' expectations in order to remain a viable operation.

ONGOING REVIEW

QA process and techniques need to be periodically revisited, usually annually. While certain methodologies and approaches may not change, the QA process should be repositioned with new points and reasons so that the process does not become stagnant.

Based on the current economic conditions, many companies are experiencing turbulence

in their operations and their budgets. The repositioning of QA in this environment is often to focus on not just on broad, "blue-sky" process improvements but on areas with the most significant dollars spent to drive the most value. In particular, this focus is on areas that are perceived to have high fixed costs. This value is derived from processes that can be reduced or reengineered. Likewise, the focus of QA should be on the more important or critical processes, instead of the most evident errors.

Improving processes is one of the best ways to reduce costs without affecting the customer experience and the ability to compete. Processes can often be simplified to reduce errors and improve quality. Process improvements have to be aligned with established corporate strategies and key business objectives.

Company metrics and reporting need to be refined so that QA can be monitored and validated by the financial reporting process. QA can also contribute to a cost effective benefit basis for investing in automating processes, such as the formation and use of a "strategic dashboard" to

continue to refine process improvements. This cycle can reconcile the paradox between a quality culture and an innovation culture. QA is incorporated into the improvement process to monitor, encourage, and incentivize employees. QA can also help overcome ingrained cultures of managers.

REWARDING QUALITY WORK

Rewarding quality work (or efforts to improve quality) builds a commitment to quality and motivation to strive for excellence. Providing individual, group, or even organizational rewards reinforces interest in QA endeavours and assures that staff values are aligned with organizational values. Not only should an organization develop incentives (both material and intangible) that foster employee's motivation to undertake QA activities and ultimately improve quality, the organization should also examine what kind of disincentives or barriers to quality currently exist and identify ways to remove them. ■

101st Annual Education Conference

October 3-6, 2010
Renaissance Austin Hotel
Austin, TX



Plans for the 101st ICA Annual Education Conference, October 3-6 in Austin, Texas, are well underway! The Renaissance Austin Hotel will host this year's event and you won't be disappointed. The hotel boasts elegant guest rooms as well as a variety of dining options. From the indoor and outdoor pools to the shopping area just outside the front door, you'll have plenty to do after you've attended the conference sessions and show floor.

The Renaissance is located just a short drive from the Airport and downtown Austin. With over 100 daily direct flights into Austin-Bergstrom International Airport, Austin is easily accessible.

Austin, the live music capital of the world, is also known for its vibrant and energetic night life with over 100 clubs, bars and restaurants with a short radius. From chic shops to happening bars and restaurants, Austin has it all.

You can be sure that ICA's Annual Conference Team will continue to provide you with a program that will give you up-to-the-moment information on what you need to know now! And, of course you can expect the popular networking opportunities like Casino Night and the closing banquet.

We'll keep you posted as new developments take place!

Ninth Circuit Case Summaries of Recent ERISA Disability Benefit Decisions

LEGAL
NEWS

Tad A. Devlin and Lisa K. Garner, Gordon & Rees LLP

It will be two years this summer since the United States Supreme Court decided *Metropolitan Life Ins. Co. v. Glenn*, 128 S.Ct. 2343 (2008). The measurable impact of *Glenn* on ERISA disability benefit litigation was anticipated and the effect has been seen in the Ninth Circuit and its lower courts in terms of discovery, case proceedings, judicial review of claim decisions and other case issues. We summarize below some of the more important decisions from the Ninth Circuit and its lower courts.

In *Dupree v. Holman Professional Counseling Centers*, 572 F.3d 1094 (9th Cir. 2009), the Ninth Circuit Court of Appeals analyzed and followed the language of the ERISA plan in determining there was no coverage under a health insurance plan for non-emergency health services at a non-contracted facility. The Court of Appeals ruled the clear language of the ERISA plan repeatedly indicated that non-contracted provider services were not covered under the health plan.

In September 2009, the Ninth Circuit decided *Montour v. Hartford Life & Accident Ins. Co.*, 582 F.3d 933 (9th Cir. 2009) and the ERISA plaintiffs' bar was celebrating. The plaintiff claimant prevailed in *Montour* when the Ninth Circuit Court of Appeals determined a conflict of interest heavily influenced the administrator's benefits decision and ruled for plaintiff claimant. In evaluating the impact of the conflict of interest on the claim decision, the Court of Appeals found evidence of administrator bias in advocating the administrator's position the claimant was not disabled, its reliance on surveillance that was consistent with the claimant's self-reported limitations, and its decision not to seek an independent medical examination and instead rely on "paper reviews" when it was not clear the medical record reviewers had all the pertinent information. The Court of Appeals questioned the administrator's failure to explain why it reached a different conclusion than the Social Security Administration's decision awarding benefits, given the administrator had required the claimant apply for SSDI benefits and would ultimately benefit financially from the

award by the ability to offset the SSDI benefit amounts from any benefit payment under the ERISA plan.

However, in spite of *Montour*, not all was lost for ERISA disability benefit plan administrators and insurers. In *Letvinuck v. Aetna, et. al.*, the insurer and benefit plan prevailed on judgment in a case in which the district court distinguished *Montour*, *Glenn* and *Saffon v. Wells Fargo & Co. Long Term Disability Plan*, 522 F.3d 863 (9th Cir. 2008).

Letvinuck was initially tried in August 2007 and the California Central District Court found in favor of Aetna and the benefit plan. On appeal, the Ninth Circuit remanded for a new trial in light of the Ninth Circuit decision in *Saffon* and the United States Supreme Court decision in *Glenn*. The Ninth Circuit instructed the district court to consider on remand whether the defendants engaged in a "meaningful dialogue" with plaintiff on the types of objective medical evidence needed, to consider evidence of conflict of interest with respect to bias on the part of defendants' medical reviewers, and to consider the impact of the plan requirements that plaintiff apply for Social Security disability benefits. In September 2009, before the new trial, the Ninth Circuit issued its decision in *Montour* in which the Court of Appeals scrutinized the insurance company's claim handling and decision, reversed the insurer's claim denial and awarded plaintiff disability benefits.

In December 2009, on remand, the Central District Court retried *Letvinuck v. Aetna, et. al.* as instructed by the Ninth Circuit. After retrial, the District Court again upheld the insurer's claim decision. The District Court carefully analyzed and discussed the claim record, handling and extra record evidence. In conducting its review, the District Court also considered plaintiff's submission of evidence to show Aetna's structural conflict of interest affected its handling and ultimate decision. The District Court rejected plaintiff's attempt to show bias by reliance on outdated deposition testimony of the medical reviewers taken in

another case, and concluded it did not support a finding that would lead to a stricter review of the administrator's decision terminating benefits. In rendering its decision, the Central District Court identified sound reasons for its holding and distinguished the facts and circumstances of the case at bar from those in *Glenn*, *Saffon* and *Montour*.

Also in September 2009, the Ninth Circuit Court of Appeals issued a decision upholding the one-year statute of limitations provision in a summary plan description ("SPD"), finding the SPD met the plan participants' reasonable expectations. *Scharff v. Raytheon Company Short Term Disability Plan, et. al.*, 581 F.3d 899 (9th Cir. 2009). Significantly, *Scharff* declined to adopt into ERISA federal common law a California insurance regulation that imposes a duty to inform claimants of statutory deadlines.

In October 2009, the Ninth Circuit issued a decision that will affect the inclusion or exclusion of discretionary review language for administrator's claim decisions in ERISA governed benefits plans. The Ninth Circuit Court of Appeals determined the Montana Insurance Commissioner's practice of denying approval of insurance forms with discretionary clauses was saved from ERISA preemption by ERISA's "savings clause" under 29 U.S.C. § 1144(b). *Standard Ins. Co. v. John Morrison*, 584 F.3d 837 (9th Cir. 2009). This case is likely to have far-reaching impact. A number of Insurance Commissioners, including California's, have stated their intention to deny any application for an insurance policy containing discretionary language.

The unpublished decision of *Chellino v. Kaiser Foundation Health Plan, Inc.*, 2009 LEXIS 24350 (9th Cir. 2009) further illustrates the impact of *Glenn* and the Ninth Circuit's lower courts' application of *Glenn* to judicial review of benefits decisions in ERISA disability cases. As in *Montour*, the Ninth Circuit found an abuse of discretion by the administrator in connection with a fibromyalgia based claim for benefits. The Ninth Circuit critiqued the administrator's

reliance on (1) surveillance which comported with the claimant's self-reported limitations; (2) the opinion of a reviewing doctor who considered a function capacity evaluation of plaintiff that the claims administrator considered invalid; (3) a requirement the claimant produce objective evidence of her fibromyalgia that was not available because none existed; and (4) a vocational assessment which adopted the medical reviewer's inaccurate report.

In an unpublished December 2009 decision, *Mobayen v. Standard Ins. Co.*, 2009 U.S. App. LEXIS 27879 (9th Cir. 2009), the Ninth Circuit Court of Appeals affirmed the lower court's decision upholding the administrator's claim denial, even though the district court had incorrectly stated the legal standard of review. The Court of Appeals found the error harmless because the lower court applied the correct analysis by specifically considering how the structural conflict of interest might have affected the administrator's determination.

Certainly post-*Glenn* and in the Ninth Circuit, plaintiff claimants have an increased opportunity to pursue conflict of interest discovery and its

potential impact on claim decisions in ERISA disability cases. In *Sullivan v. Deutsche Bank*, 2010 U.S. Dist. LEXIS 8414 (S.D. Cal. February 2, 2010), the Southern District Court of California granted a claimant plaintiff's discovery motion to compel to obtain claim administrator evaluators' performance reviews. The District Court agreed with plaintiff's argument that this evidence could lead to admissible evidence of conflict of interest.

Because of the prevailing party fee provision of ERISA (§ 502(g)(1)), the ability of claimant plaintiffs to recover attorney's fees and costs often dictates case strategy and litigation handling. Certainly, the ability to conduct conflict based discovery by plaintiffs will increase their attorney fee claims in ERISA disability cases.

In *Langston v. North American Asset Development Corporation Group Disability Plan* (January 20, 2010) U.S. Dist. LEXIS 12507 (N.D. Cal. January 20, 2010), the Northern District Court found plaintiff was the prevailing party for purposes of awarding attorney's under ERISA's fee sharing provision

where the court ordered remand to the claim administrator that resulted in reinstatement of plaintiff's benefits.

Without question, the ERISA litigation landscape has changed in the Ninth Circuit since *Glenn*. Insurers who provide group plans and administer the claims under group plans should take extra caution to ensure their claim files are thorough, complete and well documented. While these best practices are not new, the consequences of failing to follow them now have even greater significance. On the positive side, this elevated risk provides insurers with the opportunity to marshal and present evidence demonstrating that they legitimately maintain and exercise appropriate insurance business practices. Good faith evidence of such practices, including appropriate claims handling and evaluation, will go a long way to overcome the practical impacts and associated risks of the *Glenn* decision on ERISA disability benefits litigation. ■

Exhibitor Prospectus Available Online for the 2010 ICA Annual Education Conference!

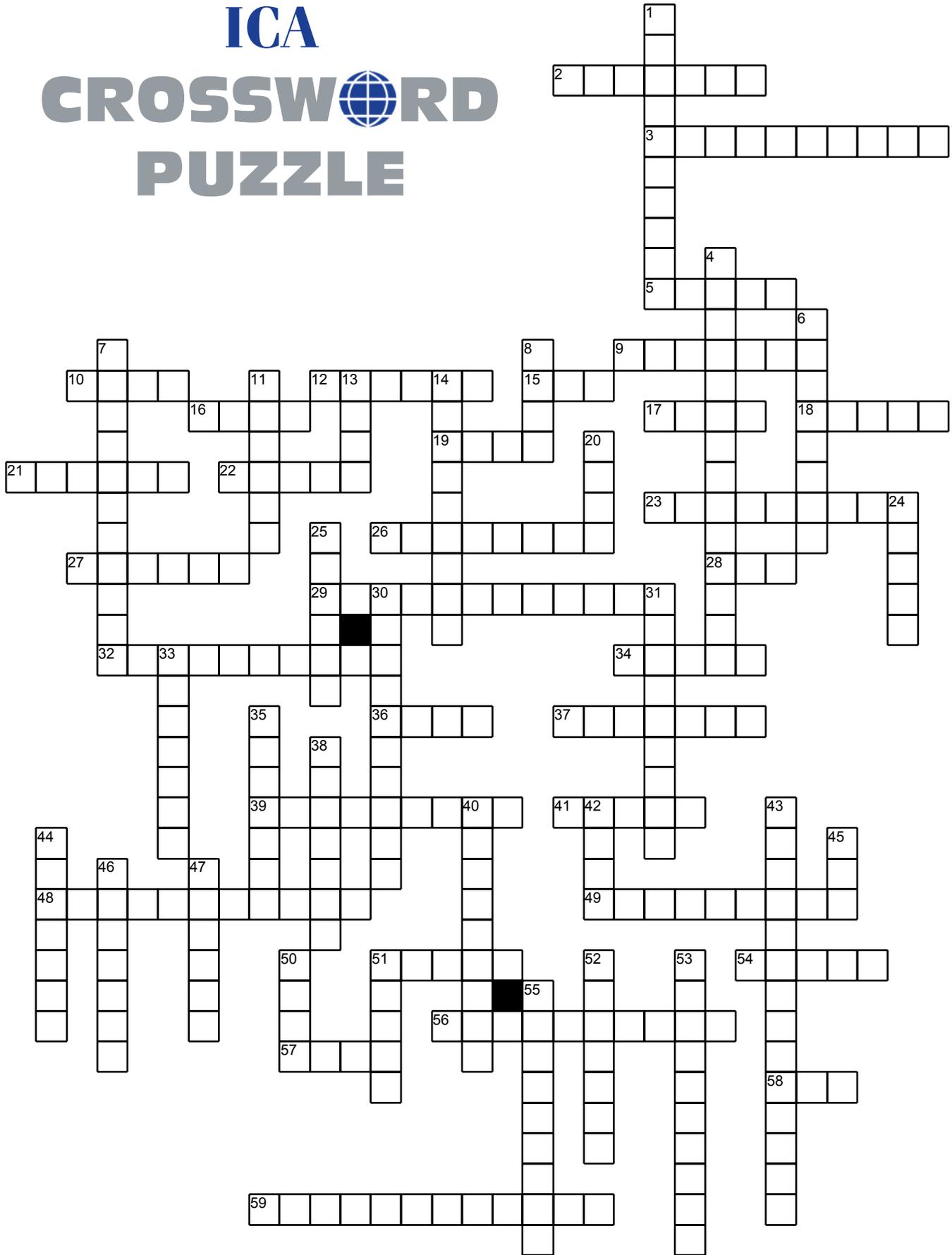
The ICA Executive Committee and Annual Conference Team are pleased to invite your firm/organization to showcase its products and/or services at the conference of the largest association of life and health claims professionals.

THE DEADLINE TO SUBMIT EXHIBITOR APPLICATIONS IS AUGUST 13, 2010.

Please visit www.claim.org to download the 2010 Exhibitor Prospectus.

The image shows a screenshot of the International Claim Association (ICA) website. At the top, there is a navigation menu with 'MEMBERSHIP' and 'LAWFIRM CONNECTION' highlighted. Below the navigation, there is a 'Welcome' section and a 'Meeting Schedule' section. The 'Meeting Schedule' section lists the '2010 Winter Meeting February 3-5, 2010' at 'Caesars Palace'. A red arrow points from the 'Download 2010 Exhibitor Prospectus' link in the 'Meeting Schedule' section to a larger graphic for the '101st Annual Education Conference' held from 'October 3-6, 2010' at the 'Renaissance Austin Hotel' in 'Austin, Texas'. The graphic also includes the text 'Celebrating 101 Years!' and a list of topics: 'ANNUAL EDUCATION CONFERENCE HIGHLIGHTS', 'ANNUAL CONFERENCE CLAIM REGISTRATION', 'SCHEDULE OF A DAY', 'EXHIBITOR AVAILABILITY INFORMATION', 'EXHIBITOR SPONSORSHIP', 'EXHIBITOR AND SPONSORSHIP MEETING LOG', 'BENEFITS AND MATERIALS', and 'EXHIBIT MEETINGS'. At the bottom of the graphic, there is contact information for the 'INTERNATIONAL CLAIM ASSOCIATION' and the 'CONFERENCE MANAGER'.

ICA CROSSWORD PUZZLE



CROSSWORD PUZZLE CLUES

ACROSS

2. Past President who once won a poetry contest
3. ICA members benefit from these workshops and conference calls
5. Acronym for a challenging life claim issue (Hint: Two sessions on this topic are offered at this years' ICA Annual Education Conference)
9. This ICA President is a graduate of Southern Illinois University and has a thing for the coleslaw at the Pike's Place Grill in Seattle
10. This Past President is no longer with us, but his lovely wife is
12. ICA Annual Dues in 1911, in dollars
15. Acronym for the ICA's unique service to the public sector
16. Twenty-_____ companies responded to the 1909 call to organize the ICA
17. This Past President served as a Colonel in the US Army Reserve and was a member of the Judge Advocate General Corps
18. If he's ever MIA, you might find this Past President at Disneyland
19. Claim designation established by the ICA in 1985
21. This ICA core committee presents workshops on managed care, LTC, Medicare and supplemental products
22. Past President who began his professional career in law enforcement
23. This committee manages the ICA's relationships with those with whom we have contracts and service agreements
26. At the time of his retirement, this Past President and his wife worked a combined total of 56 years in the claim departments at Connecticut General
27. This Past President is a real Packer Backer
28. One of the longest standing ICA core committees
29. Took an influential role in the creation of the ICA
32. Feature added to the ICA's Annual Conference in 1992
34. _____ & Claim Abuse, an ICA Core Committee
36. Back in the day, you may have found this Past President cruising in his dad's Buick Electra
37. What insurers may do within two years of issue
39. Prior to his retirement, this Past President earned the CLU, ChFC, CFE, FLMI and ALHC designations
41. www._____.org
48. This ICA Core Committee considers the administration of treaties
49. This ICA committee oversees the association and administers its business
51. ICA's first Claims Education Program exam was administered in 19__5
54. Special attention may be needed on a claim filed by this type of beneficiary
56. This committee chooses candidates for officers of the ICA
57. Past President who also once presided over the Chicago Claim Association and the Midwest Claim Conference
58. Acronym for what is often an important measure in an LTC claim
59. One of the foundations of the ICA's success

DOWN

1. The lower chambers of the heart
4. Location of the ICA's Diamond Jubilee Celebration
6. _____ City hosted the ICA's 1st Annual Convention
7. A type of reinsurance agreement
8. Professional designation first offered by the ICA in 1997
11. This Past President was the Association's first female Secretary, and plays a mean game of rummy
13. Past President who served as the 1981 President of the MD-DC Claim Association
14. This company employed the ICA's first President
20. ICA _____, the Association's quarterly publication
24. Estate and Inheritance _____, a Law Committee Report
25. The host website of the ICA's Claim Education Program
30. The focus of this ICA core committee includes short and long term products, and waiver of premium benefits
31. The ICA's Marketing & _____ Planning committee promotes the ICA's education program and membership benefits
33. This gentleman served as the ICA's President in 1970
35. Our 50th Anniversary Meeting was the ICA's first visit to this state
38. This ICA committee oversees the handling of the ICA investment account, budget, income and expenses
40. This ICA committee oversees the development of curriculum, texts and study guides
42. AD&D and annuities are covered by this ICA core committee
43. The ICA's _____ Management committee is responsible for publishing its quarterly newsletter
44. A claims man is compared to this in Double Indemnity
45. A policy's Misstatement of ___ Provision may be applied to a claim
46. _____ & Beneficiary Designations, a Law Committee Report
47. This fair lad has been the ICA's one and only Executive Director
50. This Past President previously welcomed ICA delegates to the Marco Island Marriott Beach Resort
51. The ICA's first female President
52. About a century ago, some accident policies did not cover injuries sustained in this part of a railway which covered by the rails and ties
53. This gentleman presided over the ICA's 2006 Annual Education Conference in Seattle
55. _____ ID, a new tool to fight healthcare fraud, waste and abuse

????????????

NEED A HINT:
Refer to past editions
of Ica news.



CLUE: See PAGE 3 for Past Presidents in Attendance at 100th Anniversary Conference.

