

Member Newsletter

Issue 32 | June 2018

President's Message »

Wow!! What a conference!



Peter Marchel

JD, MBA, CDR, RPLU
CPCU, AIM, AIS

Marchel & Associates Risk Consulting

Carnation, Washington

(425) 788-4349

peterm@
marchelassociates.com



This year's annual gathering in "Cow Town" broke all records for AAIMCo conferences. With 33 members plus 19 spouses in attendance, representing more than half our membership, we topped the previous record set in 2016 at the San Antonio conference.

The conference was held at the historic Ashton Hotel, near the centrally located Sundance Square in downtown Fort Worth. We kicked off the conference on Thursday afternoon with member introductions and the annual Business Meeting. Later the evening began with a welcoming cocktail reception, following which we were transported by a "big 'ol bus" to Cooper's BBQ in the famous Fort Worth Stockyards. There was plenty of Cooper's highly rated barbeque, with all the sides and fixin's, along with cold beer and wine. And the cobbler and ice cream desert was the perfect ending.

Friday morning the members conferenced for an agenda packed with timely topics, while the spouses gathered for a day trip to the famous Magnolia Market Silos in Waco. A shout out to **Kevin Hromas** for covering the cost of the tour bus transportation through a generous referral fee contribution! Friday evening we enjoyed a nice cocktail reception and excellent dinner at Ruth's Chris Steak House, just a short walk from the hotel. And many thanks to **Van Hedges** for introducing us to a sample of excellent Argentine wine distributed by his son's import company.

On Saturday the members met again in morning and afternoon sessions, while the spouses engaged in some sightseeing, including visits to Fort Worth's well-known Water Gardens, local museums, a cattle drive at the Stockyards, and the opportunity to ride a longhorn steer! The conference concluded Saturday afternoon, with some departing then and a few others spending an extra night before heading home.

Once again the conference reinforced the significant value of these annual events. A time to learn, share and broaden our knowledge base with top professionals – fellow AAIMCo members – in our fields of expertise. It's also an opportunity with no substitute to network, share experiences, and develop solutions for common challenges in our individual practices.

Above all, it's a time to get better acquainted, to renew old friendships and develop new ones.

Association News »

Lisa Harrington – Left Brain, Right Brain

Texas member, **Lisa Harrington**, recently published an article titled “Engaging Both Sides Of The Brain” in the June edition of Rough Notes magazine. The article discusses the concept of using both sides of our brains – the logical left brain and the creative right brain in order to balance one’s growth. To view and read the article, please click [here](#).

Bill Wilson – 7 Habits

Tennessee member, **Bill Wilson**, recently published an article in the Spring Edition of Insights Magazine, distributed by The Institutes CPCU Society. In the article he shares the seven tenets of professional conduct for the insurance and risk management industry, and encourages the following of the principles and practices he has outlined in the article. Please contact Mr. Wilson for further reading.

Jason Murgio – 20 Year Anniversary

New York member, **Jason Murgio**, reports that his firm, Merger & Acquisition Services, is celebrating a milestone anniversary and has grown dramatically during the past 20 years. They have expanded their geographic presence and worked on hundreds of insurance related transactions involving insurance companies, run-off businesses, captives, risk retention groups, shell companies, MGA’s/MGU’s, wholesalers, retailers, third party administrators, capital raises, program placements and valuation opinions. Congratulations to Jason for the wonderful growth of his company

Kevin Quinley – Book Review

Virginia member, **Kevin Quinley**, recently wrote an article titled, “Provocative Manifesto Offer Paradigm Shift in Prepping Witnesses” in which he reviewed a provocative new book by Boston litigator Kenneth Berman, Reinventing Witness Preparation : Unlocking The Secrets to Testimonial Success”. The book discusses a reinvention of the way experts prepare to testify. AAIMCO members that provide expert witness testimony may be interested in his review, and the book as well. To view his article, please click [here](#).

Have news for the next edition?

We want to know what's been going on in your practice. Received an award? In the middle of a really interesting assignment? Published an article?

Email your news to
Lesley Perkins.

lesley.perkins@aaimco.com

Membership Report »

As of our April Annual Conference, seven new members that had joined since last year's conference, some of whom attended the Fort Worth gathering, introduced themselves and offered a quick description of their practices. We welcomed:

NEW PROFESSIONAL MEMBERS

Frederick Berry	Frederick C. Berry Jr., PC	Phoenix, AZ
Olie R. Jolstad	Olie R. Jolstad & Associates LLC	West Linn, OR
James J. Moore	J&L Risk Management Consultants, Inc.	Raleigh, NC
Mark L. Pollack	Affirmative Risk Management	Little Rock, AR
James E. Rensimer	The Rensimer Law Firm, OLLC	Houston, TX
Pauline Thomas	Effective Risk Management	Irvine, CA

NEW ASSOCIATE MEMBERS

Craig Andrews	Andrews Risk Advisory, LLC	Defiance, OH
Vincent "Chip" Boylan		Rockville, MD
Charles C. Hewitt	Carter Insurance Claim Services, Inc.	Bluffton, SC

2018 has seen the departure of nine members. Reasons vary. Some explained that their practices were going in a different direction. Some perceived that AAIMCo was largely a group of expert witnesses and that this did not fit their business model. Others cited budget constraints and lack of return on investment (ROI). Another related that he perceived AAIMCo as largely a defense-oriented expert witness group and his practice was focused on the plaintiff side.

Membership attrition deserves reflection. As I see it, AAIMCo is challenged to define, refine and improve its "value proposition" for existing and prospective members. I.e., what specific advantages and features do we offer to keep existing members and attract new ones?

The Annual Conference is a terrific event for those who choose to attend. Incorporating into annual dues a "deposit" for the Annual Conference is a positive step and perhaps a factor explaining why the 2018 Conference in Fort Worth enjoys a record number of registrants.

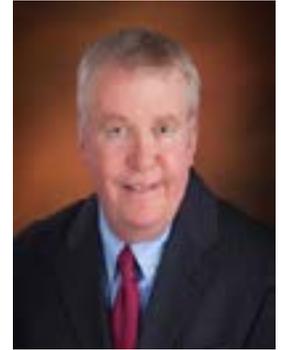
Further, let's not overpromise "getting more referrals" as an implied rationale for inducing people to join. Thus, the organization may consider what other "deliverables" it can provide to members throughout the year. Such deliverables could include tele-seminars, webinars, white papers or newsletters with substantive practice tips. This might include giving thought to a brief "elevator pitch" that each of us has to refer to when trying to recruit new members.

We need to search for a compelling answer to the question, "What's in it for me to remain or become a member of AAIMCo?" A rhetorical question admittedly, but one that we face along with many other voluntary/professional organizations.

Further discussion is merited with regard to the vetting process for candidate members and crafting objective criteria to use to screen new members. In my opinion, we need to seek reasons to include prospective members, without lowering our standards. We need to seek a diversity of opinions and perspectives and not succumb to the temptation to just admit those that we like, those with whom we have never crossed paths (or swords) and those with industry views and perspectives that may differ from ours.

One final point. The website update and revision represents an opportunity to harness that site as a recruitment tool to articulate our value proposition for insurance industry professionals who might be on the fence about applying. At the annual conference, we discussed among other things including a tab or section of the website that included member "testimonials" where current AAIMCo members briefly articulate why they joined and what benefits they derive from this professional organization. Stay tuned for developments along these lines.

I have no doubt that AAIMCo is up to this challenge in order to remain a growing and dynamic organization!



Kevin Quinley
CPCU, AIC, ARM, AIM, ARE,
RPA

**Quinley Risk Associates,
LLC**

Chesterfield, Virginia

(804) 796-1939

kevin@kevinquinley.com

**Know of someone
who would make a
great member?**

AAIMCo is always working to expand its membership with highly qualified consultants and associates.

Contact Membership Chair Kevin Hromas with your recommendation.

Treasurer's Report »



Russell M. Taylor

Risk Management
Tactix

Spring, Texas

(281) 257-8585

russ.taylor@
riskmanagementx.com

Financially speaking, AAIMCo is in a lot better shape than the most powerful nation on earth! To wit: No annual deficit; No accumulated debt; Operating fiscally within our means. Although we're a tad smaller, our financial picture is a lot more positive than the U.S. Treasury's results!

The accompanying reports provide a snapshot of AAIMCo's finances as of June 1st. Note that this year's total dues income is almost identical to that of 2017. And due to the record attendance by more than half of our membership, conference registrations for this year's gathering in Fort Worth were up significantly. In the referral fee category, revenue is up thanks to a substantial contribution from Kevin Hromas, while the number of contributions for the first five months remained the same as last year at one each. Referral fee contributions help offset the cost of our annual conference.

On the expense side, conference costs were higher due to greater attendance, but came close to conference income (registration plus referral fees). Due to higher costs for the 2017 conference in Seattle, expense exceeded conference income by about \$4,600, whereas the gap reduced to about \$1,600 this year.

All other expenses total \$5,048 for the first five months of 2018 versus \$4,341 for the same period in 2017, an increase of roughly \$700. The difference is the result of a combination of items: this year's two year renewal of our reference subscription to Rough Notes and the travel expense for Executive Director Lesley Perkins' attendance at our conference, which are partially offset by lower insurance expense due to the timing of a payment.

And rounding out the financial picture, AAIMCo continues to have a positive net worth as the Balance Sheet indicates.

Treasurer's Report



Russell M. Taylor

Risk Management
Tactix

Spring, Texas

(281) 257-8585

russ.taylor@
riskmanagementx.com

Balance Sheet

	June, 2018	June, 2017
ASSETS		
Current Assets		
Checking / Savings (Woodforest)	35,019.85	29,905.53
Accounts Receivable	258.00	0.00
Total Current Assets	35,277.85	29,905.53
Other Assets		
Accum Depr - Sect 179	-600.35	-600.35
Epson Projector	600.35	600.35
Total Other Assets	0.00	0.00
TOTAL ASSETS	35,277.85	29,905.53
LIABILITIES & EQUITIES		
Equity		
Opening Balance Equity	5,265.39	5,265.39
Retained Earnings	18,829.85	15,786.38
Net Income	11,182.61	8,853.76
Total Equity	35,277.85	29,905.53
TOTAL LIABILITIES & EQUITIES	35,277.85	29,905.53

Profit & Loss Statement

	June, 2018	June, 2017
INCOME		
Dues		
Dues - New Affiliate Member	0.00	225.00
Dues - Affiliate Member	1,500.00	1,800.00
Dues - Associate Member	180.00	0.00
Dues - Retired Member	90.00	90.00
Dues - New Associate Member	420.00	0.00
Dues - New Professional Member	799.00	1,450.00
Dues - Professional Member	14,700.00	14,100.00
Total Dues	17,689.00	17,665.00
Referral Fees	650.00	250.00
Application Fees	125.00	150.00
Conference Registrations	18,600.00	11,850.00
TOTAL INCOME	37,064.00	29,915.00
EXPENSE		
Travel Expense	626.86	0.00
Administrative Services	400.00	400.00
Banking Expense	10.00	0.00
Conference Expense	20,833.00	16,720.26
Executive Director Services	1,600.00	1,600.00
Insurance	780.00	1,681.00
IT Services and Hosting Fees	0.00	650.00
Office Supplies	0.00	9.98
Other - Misc. Expense	131.44	0.00
Research Services	1,500.00	0.00
TOTAL EXPENSE	25,881.39	21,061.24
NET INCOME	11,182.61	8,853.76

Member Spotlight »

Dave Mandt



I 'm one of those people who didn't have insurance as a career goal. In fact, the sum total of my knowledge about insurance was that it was something you paid for a couple of times a year and, in between times, tried not to spend too much time thinking about it.

A native of Cleveland, Ohio, I graduated from the College of Wooster with a liberal arts bachelor's degree in 1967. During those undergraduate years, I developed an interest in radio and television broadcasting while working summers at a Cleveland radio station to help pay college expenses. Following graduation, I was accepted into a University of Denver's graduate program and began a year's work on a Masters' degree in Mass Communication while serving as a graduate assistant and working part time at a Denver radio station.

By that time, draft deferments for students had become a thing of the past. So, in early 1969, I entered the US Air Force, and after basic training, was assigned to Keesler AFT, Mississippi and was able to continue to work in a field that I liked and a field I could continue to learn more about working on production of films and videos used in advanced technical training.

My high school sweetheart, Susan, and I married later that year. Susan joined me in Biloxi, Mississippi where I also had a part time job at a local radio station in addition to my Air Force duties. Newlyweds, we moved to Biloxi in August . . . just in time to experience (but somehow survive) Hurricane Camille. The devastation and destruction was mind numbing.

In mid-August 1969, the storm made landfall on the Mississippi Gulf Coast not far from where we lived. Camille is one of only three Category 5 hurricanes to make landfall in the US, the other two being the 1935 Labor Day Hurricane in the Florida Keys and Hurricane Andrew in 1992. It also ranks as the 2nd most intense hurricane (by barometric pressure) to strike the continental US. The maximum sustained winds are only estimated because wind-recording instruments in the landfall area were destroyed. Estimates range from 175 to 200 miles per hour. A storm tide of 24.6 feet was recorded in a neighboring town.



Life slowly returned to something approaching normal. A few months later, I was reassigned to a one-year tour at the American Forces Radio and Television Service at Sondrestrom, a small joint US/Danish air base in Greenland. Before shipping out, I contacted a few buddies who had been there before to find out a bit more about the place. "Yeah," they said, "it's remote assignment." (Was it ever!!!) But they also said "Don't worry. There's a woman behind every tree." What they didn't say was that there weren't any trees.



After arriving there one night in January during a blizzard, I was detailed as a radio broadcaster and anchor reporter for the local 11PM television newscast. A friend and I also managed to get part time jobs managing the base's NCO Club warehouse, which – we still think – made us the largest wholesale liquor distributors anywhere in the free world north of the Arctic Circle. All told, it wasn't a bad overseas tour.



David Mandt

CPCU, ARE

Professional Claim & Loss Reporting

Montesano, Washington

(360) 482-1680

d.mandt@profclaim.com

Returning stateside after Greenland, I was assigned to Lowry AFB in Denver, Colorado for the remainder of my four years' active duty, doing a job very similar to what I'd done in Mississippi. By the time I was discharged in 1973, our daughter had come along. I'd assessed job prospects in the broadcast industry and figured out that supporting a family and working in radio or television were incompatible goals.

So, I began looking at other career options working with a recruiter who arranged introductions to the insurance industry – first in life insurance sales and then in insurance claims. Life insurance sales quickly proved to be not my cup of tea. I was a lot more favorably impressed toward property and casualty claims and was hired by an outfit called Safeco.

After a few weeks' initial training, and attending the four-week claim school in Seattle, I set to work as a multi-line adjuster in a claim office in Denver. The company was experiencing lots of growth and that, in turn, created a need for claim employees to be open to relocation. Like counterparts at other insurers, we often shared a common experience with people at IBM: "I've Been Moved."

About mid-1973, we transferred to a one-adjuster resident claim office in Santa Fe, New Mexico for the next two years.. Our son arrived the following year. Susan and I had enjoyed our time in Colorado before we moved to New Mexico and wanted to return there. I let my boss know of our desire. Good fortune smiled. The company opened a resident claim office in Greeley, Colorado - about sixty miles north of Denver - in early 1975. I quickly accepted an offer to transfer there.

Working in a resident office was one of the better jobs in the company. To this day, I remember and appreciate the time I had in Santa Fe and Greeley. I was able to learn about the agencies in my service areas, had the opportunity to work closely with high quality independent agents and their staffs, to learn agency-company relations from the ground up – some admittedly by trial and error – but always from the standpoint of a productive working partnership for the benefit of the agents and their clients whose business I serviced. I'll always be grateful to those agency principals who took the time to work with me, to answer my questions, to make my job as an adjuster easier, to help me see the business from the producer's side of the coin and to develop invaluable service skills that have stayed with me throughout the years.

In 1977, we moved again – this time to Safeco's Denver division office. I'd been promoted to property claim supervisor, an inside job that came with another learning curve dealing with issues different than those I'd experienced as a field adjuster. Now there were things like case reserving, reserve adequacy studies, technical file supervision of 50 or so field adjusters' work product, developing and measuring performance to objectives, quality assurance, management reporting, adjustment expense management, catastrophe response planning, catastrophe reserving, collaboration with actuaries on reserve development, IBNR, etc. In short, it was a great opportunity to learn more about the claim business.

In mid-1978, another field opportunity came along and we found ourselves back in New Mexico, this time in Albuquerque where I was assigned as the Area Claim Manager responsible for claims offices in New Mexico, the El Paso, Texas area and Las Vegas/Clark County, Nevada. As with my other assignments, there were new issues: staffing, budgeting, personnel administration, interaction with insurance regulators and, of course, agency relations, direct customer service, etc. Again, I had the good fortune to be able to work with a group of long-term very successful and highly professional independent agents. This time, however, my role had some aspects that weren't strictly claim related: front-line underwriting, agency marketing, claim department support of agency sales presentations and of sales promotions in several of Safeco's annual production campaigns.

In 1982, Safeco's claim department was reorganized. The resulting model centralized claim handling in regional offices utilizing inside adjusters specialized by line of business rather than multi-line. Adjusters who remained in the field became task oriented versus the end-to-end approach under the multi-line model. As part of this new program, several home office claim functions and authority were delegated to regional claim departments. Many adjusters and management personnel moved to the regional offices. Smaller field offices were closed.

As part of this reorganization, our family moved back to Denver where I became a "casualty analyst", serving as an in-house delegate of the home office, working with, teaching and advising local claim unit managers on larger exposure liability claims and serving as an interface between the region office and the home office claim staff. This was another welcome learning opportunity. I was able to gain added experience working on a greater number of claims with higher exposure than had been the case during my time in the two resident offices.



In the mid-1980's, the company started receiving increased numbers of asbestos and environmental claims. In 1988, I transferred to the home office in Seattle to head up a claim team dedicated to those exposures and the related unique coverage issues. Starting with a group of four senior claim co-workers, our group grew into four specialty units, each with four or five experienced adjusters and a local manager. Later, construction defect claims and some excess/surplus lines claims merged into the environmental claim group. That operated until another corporate reorganization in 2002 when a new VP of claims was appointed and quickly decided to disband the specialized claim units. The experienced claim professionals and the files they'd been handling were merged into conventional workflows.

Several more reorganizations followed. The home office claim group became less focused on working with claims and more fixed on project implementation and management. My focus shifted to two new department projects. One was aimed at reducing the number of outside law firms handling lawsuits and concentrating the work into fewer, larger firms perceived as better able to handle the resulting volume as well as deliver corresponding economies of scale. With other colleagues, we revised the law firm panel by about 50% over about a year and a half.

The second was intended to increase efficiency in management of legal spend through more active review of legal bills. Simultaneously with our work on the legal panel and with partnership of an outside vendor, we developed and implemented an automated system that allowed law firms to submit their bills online and in a format that would facilitate automated review and audit and quick payment.

Finding myself in a role dealing more with projects and systems rather than with claim resolution and management work than earlier years, I developed a desire to leave the corporate environment but remain in the claim side of the industry. So, at the end of 2005, with the right number of years of service and years of age, I retired from Safeco.

That retirement was short-lived. Susan quickly reminded me that although she had said "for better or for worse" some years before, that didn't necessarily mean "for lunch, too." OMG!! No more semi-permanent vacation!! It meant I needed to find something to do.

Early in 2006, I turned entrepreneur focusing my practice on consulting with law firms and insurers, providing litigation support and expert witness services in such areas as coverage disputes and compliance with claim handling practices/standards. Along the way, I've expanded it to include appraisal and umpire services in disputed property claims, claim advocacy for insurance agents/agencies and development of claim evaluation, settlement and negotiation strategies as well as claim auditing services for insurers.

I've enjoyed having had the opportunity to personally investigate and adjust numerous claims in personal and commercial lines. I've gained valuable experience in claim investigation, coverage analysis and interpretation, liability investigation and assessment, damage assessment, claim evaluation and settlement negotiation. I've also been fortunate to have had responsibility for providing technical supervision to both staff adjusters as well as independent adjusters and third party administrators who, themselves, had combinations of front line and supervisory responsibility while maintaining adherence to both corporate standards and regulatory requirements. And, I've had managerial responsibilities, some at the corporate officer level, for these and other related areas.

It's been my good fortune also to have served on several voluntary industry level committees such as the DRI Insurance Law Committee, steering committee of the Environmental Claim Managers' Association, the DRI Insurance Roundtable, the DRI committee that produced the Recommended Case Handling Guidelines For Insurers, CPCU's Claim Interest Section, Claim Section Committee, and the Coverage, Litigators, Educators And Witnesses Interest section. In these and other roles, I've been able to become acquainted with other industry colleagues and, through those relationships, gain additional knowledge of and familiarity with industry customs and practices related to appropriate handling of claims and claim-related litigation.

I received the CPCU designation in 1986 and the Associate in Reinsurance (ARe) in 1996. I've been and remain active in the CPCU Society, the Pacific Northwest CPCU Chapter, where I served as a chapter officer between 2002 and 2005. I also maintain professional memberships in the Puget Sound Adjusters Association, the Northwest Insurance Coverage Association, the Claims and Litigation Management Alliance (CLM) and, of course, in AAIMCo. I'm licensed as an adjuster in Oregon and Alaska and am dual-licensed as an independent adjuster and public adjuster in Washington.

Apart from the insurance community, I've served as a member of the advisory board of the Seattle Public Schools Academy of Finance. The Academy is based on an industry-validated career-themed academic curriculum that includes current industry standards and practices, literacy strategies, and STEM integration to help students develop a well-rounded skill set beyond academics and includes soft skills needed to succeed in college and the working world. And recently have been appointed to our city's Civil Service Commission.

Along the way, Susan and I have been blessed with good health, a wonderful family and good friends. Now that we're sort of partially semi-retired, we've been able to kick back a bit and do some traveling, a few other things that we've put off and, frankly, recapture some time that may have eluded us during the years of a 9 to 5 job.

In the insurance industry and outside of it, it's been a good career. I have and have had the good fortune to have worked for and with lots of very capable, competent and caring professionals. Now as a member of AAIMCo, that experience is continuing. Since joining AAIMCo thanks to Jeff Bronaugh, I've come to appreciate the opportunity to collaborate with a group of top-notch professionals. What's been particularly rewarding is that although we each have our own area of specialization, we're always ready to assist each other so that, together, we can all be more successful.

Susan and I hope to see you all at next year's AAIMCo Conference in Charleston, SC and look forward both to making new friendships and renewing past ones.



Dave Mandt
Professional Claims & Loss Consulting
PO Box 854
Montesano, Washington 98563
(360) 481-1680



Spotlight Article »

David W. Mandt

CPCU, ARe

When A Reservation Of Rights Might Not Be A Reservation Of Rights

Ask almost any claim professional whether they'd prefer to write a reservation of rights letter or undergo a root canal. A significant number might choose the dental procedure. Writing a reservation of rights letter is often seen as universally unpleasant and something to be avoided if at possible. Nevertheless, most claim professionals will, at some time, be faced with the responsibility of having to compose such correspondence. Clearly, it's not an effort to be undertaken casually. A reservation of rights letter not thoughtfully composed and that lacks certain key information can be (and often is) attacked as defective by an insured, a policyholder attorney or, worse, adjudged ineffective by a court – with resulting undesirable consequences from the insurer's point of view.

On the other hand, a well-written reservation of rights letter can represent the difference between an insurer being able to sustain legitimate coverage defenses or being required to provide coverage for which the insured didn't contract and for which no premium was received.¹

To effectively preserve the insurer's right to assert policy or coverage defenses, reservation of rights letters should inform the insured of all coverage or policy defenses that reasonably exist under facts of the case. Unfortunately, it's common to see a reservation of rights letter that begins with a short summary of relevant facts or allegations of a lawsuit followed by lengthy quotes of policy language – some of which may have no relationship to the claim at hand – and concludes with the bare expression that the insurer is reserving its right to deny coverage, to deny defense or take some other action potentially adverse to the insured's interests. Often missing is necessary specific language explaining how and why, in the insurer's opinion, policy language relates to the facts of the loss or allegations of a lawsuit in way that might limit or negate coverage.

Courts are increasingly finding fault with poorly written reservation of rights letters, declaring them to be ineffective and mandating that because the insured did not receive a specific, understandable or timely explanation of the reasons why coverage might not apply, that what the insurer intended as a reservation of rights isn't sufficient. If so, the insurer may be left without coverage defenses thought to have been viable.

A recent example of such a situation is found in a 2017 decision of the South Carolina Supreme Court. In that case, *Harleysville Group Insurance v. Heritage Group Communities*, the court held that although the insurer's reservation of rights letter said that it was a reservation of rights letter and contained multiple pages of policy provisions and other language often found in reservations of rights letters, this one was ineffective because, in the Court's opinion, it did not provide an adequate explanation of why the insurer believed it might not have been required to provide coverage for the claimed loss.² According to the court:

Harleysville produced letters it sent to former Heritage principals and counsel [* * *] explaining that [it] would provide a defense in the underlying suits and listed the name and contact information for the defense attorney Harleysville had selected to represent Heritage in each matter. These letters identify the particular insured entity and lawsuit at issue, summarize the allegations in the complaint, and identify the policy numbers and policy periods for policies that potentially provided coverage. Additionally, each of these letters (through a cut-and-paste approach) incorporated a nine- or ten-page excerpt of various policy terms, including the provisions relating to the insuring agreement, Harleysville's duty to defend, and numerous policy exclusions and definitions. Despite these policy references, the letters included no discussion of Harleysville's position as to the various provisions or explanation of its reasons for potentially denying coverage. With the exception of the claim for punitive damages, the letters failed to specify the particular grounds upon which Harleysville did, or might thereafter, dispute coverage. [emphasis added]

¹ Different states have different rules applicable to reservations of rights. This article isn't intended as legal advice or as a detailed discussion of those requirements. Be sure to consult local counsel for professional guidance on how best to ensure full compliance in the jurisdiction in question.

² *Harleysville Group Insurance, A Pennsylvania Corporation, Appellant/Respondent, v. Heritage Communities, Inc.*, 420 SC 321 - SC: Supreme Court 2017.



David Mandt

CPCU, ARe

Professional Claim & Loss
Reporting

Montesano, Washington

(360) 482-1680

d.mandt@profclaim.com

By contrast, Harleysville's reservation of rights, quoted below, did provide an explanation of why the insurance company thought that punitive damages being claimed against its insured would not be covered:

The complaint filed against you seeks punitive damages. [Harleysville] reserves the right to disclaim coverage for these since under all of your policies, they would not arise from an "occurrence," do not fit the definition of "bodily injury" or "property damage," and/or were "expected and intended" within the meaning of exclusions in the policies.

The court then compared the differences in how punitive damage claims and other claims against its insured were addressed in the reservation of rights letter:

The fact that Harleysville stated the specific grounds for contesting coverage for punitive damages stands in stark contrast to the otherwise non-specific — "we will let you know later" — purported reservation of rights. It is reasonable to conclude that Harleysville knew precisely how to protect its interests, but elected to be purposefully vague on all coverage matters except punitive damages.

Significantly, none of the reservation letters advised Heritage of the need for allocation of damages between covered and non-covered losses or referenced a possible conflict of interest or Harleysville's intent to pursue a declaratory judgment action following any adverse jury verdicts in the underlying lawsuits.

[* * *]

Concluding its analysis of the reservation of rights, the Court detailed reasons why it found the reservation defective.

Here, except as to punitive damages, Harleysville's reservation letters gave no express reservation or other indication that it disputed coverage for any specific portion or type of damages. Nor did the letters or testimony indicate that, in the event Heritage was found liable in the construction-defect suits, Harleysville intended to file [a declaratory judgment action] to contest various coverage issues. Specifically, Harleysville did not expressly put its insureds on notice that it intended to litigate the issues of whether any damages resulted from acts meeting the definition of occurrence, whether any damages occurred during the applicable policy periods, and what damages were attributable to non-covered faulty workmanship. And in no way did the letters inform the insureds that a conflict of interest may have existed or that they should protect their interests by requesting an appropriate verdict. [* *] Harleysville's reservation was no more than a general warning and too imprecise to shield [the insurer]. [internal quotes and citations omitted] We find there is evidence in the record to support the [* *] finding that Harleysville's reservation letters were insufficient to reserve its right to contest coverage of actual damages [* * *] [W]e find Harleysville did not effectively reserve the right to contest coverage [and thus] we need not address Harleysville's claims of error regarding various policy exclusions.

So, not only was the insurance company's reservation of rights declared to be of no effect, the insurer also lost the ability to enforce certain exclusions in its policy. This decision from South Carolina came at a time when other – similar – issues had been and were still being decided by courts in other states.

In Missouri, for example, a court held that even though an insurer's multiple reservation of rights letters included – as did Harleysville's – discussions of the facts of the case, lengthy excerpts of policy language and statements that the insurer was reserving its rights, they were ineffective because they did not "clearly and unambiguously explain how those provisions were relevant to [the insured's] position or how they potentially created coverage issues."³

3 Advantage Builders & Exteriors, Inc. v. Mid-Continent Casualty Co., 449 S.W.3d 16 (Mo. Ct. App. 2014)

A Georgia court similarly ruled that the insured's failure to specify reasons why it was attempting to reserve its rights, its discussion of policy language and facts of the case was insufficient and ambiguous. The court found the purported reservation of rights ineffective because it did not fully and fairly inform the insured of the nature of and reasons for the insurer's reservation.⁴

Maxum's attempted reservation of rights was defective. In order to inform an insured of the insurer's position regarding its defenses, a reservation of rights must be unambiguous. [* * *] A reservation of rights is not valid if it does not fairly inform the insured of the insurer's position.

Therefore, [* * *] Maxum's notice here is still inadequate because it did not unambiguously inform EWES [the insureds] that Maxum intended to pursue a defense based on untimely notice of the claim. The boilerplate language in the denial letter purporting to reserve the right to assert a myriad of other defenses at a later date did not clearly put EWES on notice of Maxum's position. [* * *] Construed liberally in favor of the insured, the purported "reservation of rights" is invalid.

Another Georgia court declared that:

The reservation of rights should also inform the insured of the specific "basis for [the insurer's] reservations about coverage".... The statement of a claims adjuster for GuideOne that it did not see coverage, but would have to see if there would be coverage issues, failed to comply with those requirements and, therefore, failed to "fairly inform" the [insured] of GuideOne's position.⁵

These references obviously aren't or intended to be an exhaustive review of court decisions from around the country dealing with the issue. They do, however, suggest that merely quoting liberal amounts of policy language and including generalized wording about reserving rights may no longer be enough to establish an effective reservation of rights. The courts that have ruled on the issue seem to be clear that, to be effective, a reservation of rights letter must be specific in linking facts of the case and relevant terms of the policy to an explanation of why the insurer believes that coverage may be limited or not available at all.

So, what elements go into a well-drafted reservation of rights letter? Here are some suggestions.⁶

- The letter should be timely. A reservation of rights letter should be issued when the insurer knows or when it should know that a defense to coverage may exist. Some jurisdictions may specify a time by which such a letter should issue; others may have no specific time deadline. It's important to know local requirements. Whether there is or isn't a specific time deadline, better practice is to issue a reservation of rights as soon as practicable. If there's a reason that some delay might be warranted, it's wise to document the reason(s) in the claim file and in the letter itself, explaining the delay.
- The letter should identify the insurance company that actually issued the policy. The name is normally found on the Declarations page. It's also wise to refrain from using company group names. For example, if the policy was issued by BigBux Auto Insurance Company, and BigBux is part of BigBux Insurance Group, the reservation of rights letter should be issued in the name of BigBux Auto Insurance Company, rather than BigBux Insurance Group.
- Identify the policy. Include the full policy number, the effective dates and, if appropriate, a description of the type of policy in question. (e.g., Homeowner, General Liability, Commercial Property, Umbrella Liability, Personal Auto, etc.) A policyholder may have multiple policies with the same insurer. Identifying the specific policy at issue may help avoid confusion later and/or may help ensure that all potentially involved policies are considered.
- Include the relevant date of loss and, if there is one, the claim number. An insured may have more than one open claim at any given time.
- In the initial portion, do use the term "reservation of rights" and explain that the purpose of the letter is to reserve the insurer's rights, some of which might include: whether to contest or deny coverage, to agree to defend the insured subject to a later right of withdrawal (if permissible in your jurisdiction and duty to defend is an issue), to file a declaratory judgment action to have the court decide coverage issues, etc. Indicating the purpose of the letter early and in clear language using the phrase "reservation of rights," may help avoid a subsequent claim that the recipient of the letter was unclear as to its meaning and was thus unable to take action to protect its interests.
- If a lawsuit has been filed and the insured is seeking defense and/or indemnity, include a summary of the allegations of the complaint or other pleadings that may bear on the insurer's duty to provide a defense or may be relevant to coverage defenses. If applicable state law permits consideration of facts or evidence not included in the complaint, summarize those facts that may be relevant to coverage. If the claim doesn't involve a lawsuit, summarize pertinent facts of the loss determined in the insurer's investigation.

4 Hoover v. Maxum Indem. Co., 730 SE 2d 413 - Ga: Supreme Court 2012

5 World Harvest Church, Inc. v. GuideOne Mutual Insurance Co. 695 S.E.2d 6 (Ga. 2010)

6 If you have questions about requirements for reservation of rights letters in your jurisdiction, consult local legal counsel.

- Cite relevant policy language. Identify the relevant policy forms, endorsements, etc, generally by form title and form number/edition date. Quote the language of the policy, exclusion, endorsement or other forms exactly. Don't rely on memory, prior correspondence on other claims or previous form letters. Cite only policy language relevant to the issue causing the company to reserve its rights.
- Avoiding insurance jargon and shorthand, explain in plain English why the insurer believes facts determined in the insurer's investigation or in allegations of the complaint and the relevant language of the policy create questions about coverage. Simply put, do not leave the insured uncertain about what policy defenses or other coverage issues the insurer is considering and why.
- Inquire whether the insured is aware of any additional information pertinent to the loss and, if so, invite the insured to submit it for further consideration.
- Indicate that, if other information presently unknown to the company is discovered, the insurer reserves the right to reaffirm or supplement its position.
- If new or different pleadings are served on the insured, ask that they be forwarded for review so that the insurer can reassess any coverage that may be available.
- Depending on the jurisdiction, some reservations of rights may, trigger a conflict of interest between insurer and insured entitling the insured to independent counsel to represent the insured in a pending lawsuit. If that's the rule in your jurisdiction, advise the insured of that entitlement. If you're not certain whether the insured is entitled to independent counsel, seek legal advice before issuing the reservation of rights.⁷ If the insured is entitled to independent counsel and your reservation of rights fails to address the issue or if the insured has been advised but has not expressly waived that entitlement in writing, the reservation of rights may be found to be ineffective.
- Send the reservation of rights to the named insured at the address shown in the policy. If you are aware of a mailing address for the named insured other than that shown in the policy, it's good practice to send a separate copy of the letter there as well.
 - If there is more than one insured, send a copy of the letter to each. There may be different coverage issues applicable to different insureds. You may need to tailor a reservation of rights letter to each individual insured. Some states may require that it be sent via certified or registered mail. Know your local requirements.
 - If the matter involves a third party claim (i.e., a liability claim) do not send the reservation of rights letter to the attorney for the plaintiff/claimant.
 - If a defense is being provided to the insured under reservation, do not send the reservation of rights letter to the attorney retained to represent the insured.
 - If coverage counsel represents the insurer, do send a copy of the letter to that attorney.
- Include an offer to review any additional information the insured may wish to submit for the insurance company to review or further consider.
- Request that, if new or different pleadings are served on the insured, the insured forward them for review to afford the company an opportunity to reassess the matter and, as appropriate, review its coverage position. If such information indicates that a reservation of rights is no longer necessary or should be modified (it does happen sometimes!) promptly withdraw or supplement the reservation of rights letter in writing.
- The reservation of rights letter should be printed on company letterhead. An employee of the insurer should sign it. That employee should be familiar with the facts of the case. If litigation between insured and insurer ensues, he or she will probably be subject to a deposition and should have a thorough understanding of the matter.

Being aware of and following local jurisdictional requirements as well as these suggestions can help accomplish the goal of preserving the company's rights to maintain its coverage defenses and, possibly, to seek reimbursement of defense costs if no coverage was owed.

7 This advice should come from the insurer's coverage counsel not from the attorney selected to represent the insured.

Annual Conference 2018

Fort Worth, Texas



Tarrant County Courthouse



Fort Worth's Famous Water Gardens



Front Row (L-R) : Neal Bordenave, Brent Winans, Jennifer Walker, Al Diamond, Sam Patterson, Tom Braniff, Bob Gad-dis, Nancy Germond, Bruce Heffner

Middle Row (L-R) : Mary LaPorte, Van Hedges, Kevin Quinley, Lisa Harrington, Greg Deimling, Pauline Thomas, Doug-las Emerick, Bill Wilson, Akos Swierkiewicz, Dannette Leonhardi, Dale Crawford, Dave Mandt.

Back Row (L-R) : Matt Richter, Michael Johnston, Chip Boylan, Kevin Hromas, Peter Marchel, Steve Coombs, James Moore, Lee Hoffman, Russ Taylor, Michael Gay





