

# Member Newsletter

Issue 37 | February 2020

## President's Message »

2020! WOW!

Who'd have think we'd make it this far? If I had known I'd live to see the year, I might have taken better care of myself way back!

Interesting trivia ... we're as close to the year 2050 as we are to 1990. In 1973, the movie "Soylent Green" came out. (When you reached a certain age, you were turned into food-paste by that name.) It was set in the "future" year of 2020 ... and last year the "Impossible Whopper" came out ... just saying ... but Whataburger remains my hamburger of choice!

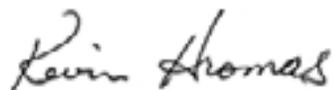
AAIMCO's annual conference - NOLA 2020! - is fast approaching May 7-8-9 and it is shaping up to be a tremendous event. And I'm not just taking about the fabulous Louisiana cuisine that will be featured at the dinners Russ will arrange for us. Kevin Quinley is putting together a great line-up of presentations highlighting topics that are timely and germane to many of our business models. Our conference hotel sits adjacent to the National World War II museum and I've heard that a visit there is both awe-inspiring and equally humbling when considering the sacrifices made by so many to keep the world free. Be sure and block out plenty of time for a worthwhile visit. New Orleans has many other options for site-seeing and shopping opportunities for those guests who will be coming with you so make sure they are signed up for the conference as well.

The AAIMCO discussion board is working well for getting information out regarding possible referrals and I encourage each of you to use it consistently. Please remember our voluntary program of donating the equivalent of 1 hour of billable time back to the organization for each referral that you obtain through this process. That helps fund our conference expenses. The discussion board is also the best mechanism for introducing topical items for confidential group interaction and discourse. Topics "fall off" after a period of time so you have the freedom to speak your mind without worrying about it coming back to haunt you in a future deposition!

AAIMCO continues to grow our membership ranks and many of our new members have come to us as a direct referral from existing members. Continue to highlight the many benefits of membership to other worthy professionals you come in contact with in various forums.

Looking forward to seeing everyone in NOLA in May!

Keep calm and AAIMCO on!



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# Association News

## Chantal Roberts – Insurance in the Cannabis Industry

Member, **Chantal Roberts** published an article titled “The Stuff of Dreams – or Nightmares?” in the November issue of CLM. The article is an interesting read on the product liability claims menace lurking in the marijuana marketplace. Ms. Roberts also linked to the article on the AAIMCo website and can also be found by clicking here.

## Kevin Quinley – CLEW Newsletter

**Kevin Quinley**, continues his prolific writing with an article that appeared in the Fall 2019 CLEW Newsletter. “As You Head to Trial, Are You Riding a Thoroughbred...or a Donkey?” is a guide with practical tips that represent a perspective on best practices in managing the trial phase of litigation. To take a look at Mr. Quinley’s article, please click here.

## Bob Pettinicchi – Joe E. Vincent Seminar



T. Braniff and B. Pettinicchi

Affiliate Member, **Bob Pettinicchi** with Insurbanc recently presented a lecture at the Independent Agents of Texas Annual Joe E. Vincent Seminar in Austin, Texas. Those in attendance at Mr. Pettinicchi’s presentation were able to learn about the current state of the M&A market and key components of financially planning and preparing for perpetuation or acquisition. They also were given ideas on various ways to access capital for growth and possible financial structures. The purpose of the lecture was for attendees to gain a better understanding of their agency’s value and to learn ways to enhance the value.

## Referral Fee Contribution Update

Hats off to members **Tom Braniff** and **Bob Gaddis**, owners of Insurance Forensics, for the latest Referral Fee contribution to AAIMCo. And a big thanks goes to **Brent Winans** for making the referral which led to the assignment.

This makes the seventh Referral Fee contribution that AAIMCo members have made in 2019. In addition to Insurance Forensics (Tom and Bob), other contributors this year include **Scott Bushnell**, **Joe Williams**, **Fred Fisher**, **Bob Gaddis** again, and **Kevin Hromas** (two contributions).

As a reminder, Referral Fees are voluntary contributions to AAIMCo in recognition of referrals received from fellow members or through the member’s listing on the AAIMCo website that result in an assignment. The recommended contribution is an amount equal to one hour of the time billed on the referral assignment.

Thanks to all who participate in making the process a success

## 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](mailto:lesley.perkins@aaimco.com)

# Membership Report »

AAIMCo employs a careful approach to member selection. Many of AAIMCo's candidates for membership are referred to AAIMCO by another member.

In the last quarter of 2019 AAIMCo welcomed four new members:

Marc Dubois M.G.D. Claim Services, Inc.	Affiliate
Daniel Buser Crain, Langner & Co.	Professional
Mark Di Nola RyeRisk Consulting, LLC	Professional
Tommy Michaels T.R. Michaels Claim Consulting, LLC	Professional

Earlier in 2019, we welcomed the following new members:

Joan Deimling Malecki Deimling Nielander & Associates, LLC.	Professional
Damian Arguello Colorado Insurance Law Center	Professional
Scott Bushnell Business Interruption Consulting	Professional
David Stegall Risk Consulting & Expert Services	Professional
Frederick Fisher Fisher Consulting Group, Inc.	Professional

We are off to a good start for 2020! In January 2020, **Christine Sensenig** of Sensenig Law Firm, P.A. joined us as a Professional member. In addition, we have several new members pending.

We appreciate the effort of members who have given referrals. Please keep them coming!



## Jennifer Walker

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## Treasurer's Report »



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It is a pleasure to report that AAIMCo remains in good shape financially at the end of 2019!

While dues revenues were a little lower for the full year, other factors helped us to stay in the black. Conference registration fees were up significantly, reflecting the great turnout at last year's gathering in Charleston. Referral fee contributions were higher – almost double what we had in 2018. While that category often fluctuates due to the timing of project initiation and completion, the higher contributions are a reflection that members are benefitting from fellow member referrals.

Hats off to **Joe Williams, Kevin Hromas, Bob Gaddis, Fred Fisher, Scott Bushnell, and Tom Braniff** for their voluntary contributions to the Referral Fee fund, in recognition of client referrals from either fellow members or the AAIMCo web site. FYI – the referral fee contributions are used to help offset the cost of our annual conference.

As evidenced by the statements that follow, total expenses in 2019 were up slightly, just a little more than 2.2 % over the prior year. The major increase in Conference expense mirrors the increased attendance by members and their significant others. Overall, total expenses were less than \$1,000 higher than the prior year. We ended 2019 with a surplus of \$5,437 compared to \$3,050 for the prior year.

The year-end Balance Sheet reflects that AAIMCo continues to be in a healthy position with total equity (and cash in the bank) of more than \$32,000. (Note that the negative figure for accounts receivable reflects 2020 dues payments by members who wished to take the expense in 2019.)

As a result of AAIMCo's excellent financial condition, the Directors were pleased to announce a 20% reduction in base member dues for 2020.

# Treasurer's Report



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## Balance Sheet

ASSETS	December, 2019	December, 2018
Current Assets		
Checking / Savings (Woodforest)	39,902.70	27,145.10
Accounts Receivable	- 7,320.00	0.00
Total Current Assets	32,582.70	27,145.10
Other Assets		
Accum Depr - Sect 179	- 600.35	-600.35
Epson Projector	600.35	600.35
Total Other Assets	0.00	0.00
<b>TOTAL ASSETS</b>	<b>32,582.70</b>	<b>27,145.10</b>
<b>LIABILITIES &amp; EQUITIES</b>		
Equity		
Opening Balance Equity	5,265.39	5,265.39
Retained Earnings	21,879.71	18,829.85
Net Income	5,437.60	3,049.86
Total Equity	32,582.70	27,145.10
<b>TOTAL LIABILITIES &amp; EQUITIES</b>	<b>32,582.70</b>	<b>27,145.10</b>

## Profit & Loss Statement

INCOME	December, 2019	December, 2018
Dues		
Dues - New Affiliate Member	225.00	166.00
Dues - Affiliate Member	900.00	1,500.00
Dues - Associate Member	540.00	180.00
Dues - Retired Member	180.00	90.00
Dues - New Associate Member	165.00	420.00
Dues - New Professional Member	1,050.00	999.00
Dues - Professional Member	14,100.00	14,700.00
Total Dues	17,160.00	18,055.00
Referral Fees	2,575.00	1,350.00
Application Fees	175.00	200.00
Conference Registrations	21,489.00	18,600.00
<b>TOTAL INCOME</b>	<b>41,399.00</b>	<b>38,205.00</b>
<b>EXPENSE</b>		
Travel Expense	0.00	626.86
Administrative Services	1,200.00	1,100.00
Banking Expense	0.00	10.00
Conference Expense	25,795.07	21,633.09
Executive Director Services	4,800.00	4,400.00
Insurance	1,275.00	1,275.00
IT Services and Hosting Fees	360.00	753.73
Legal & Filing Fees	30.00	20.00
Other - Misc. Expense	501.33	361.46
Research Services	0.00	1,500.00
Website Design Project	2,000.00	3,475.00
<b>TOTAL EXPENSE</b>	<b>35,961.40</b>	<b>35,155.14</b>
<b>NET INCOME</b>	<b>5,437.60</b>	<b>3,049.86</b>

# Member Spotlight »

## Akos Swierkiewicz, CPCU

### Professional Background

Akos Swierkiewicz is Founder and Principal of Insurance & Reinsurance Consulting & Outsourcing Services (“IRCOS, LLC”) and Insurance Expert Network, LLC (“IEN”). His current practice at IRCOS, LLC consists of insurance and reinsurance expert witness, consulting and arbitration. The IEN is an insurance expert witness referral service to attorneys.

After graduating with a B. A. in Economics, Akos began to search for jobs and applied for a position at the Insurance Company of North America (“INA”). After taking a three-hour test, he was told by INA: “don’t call us, we’ll call you”. His phone did not ring. When another position was advertised by the INA, he applied, only to be turned away. Undaunted by lack of success, when a third position was advertised for a commercial underwriter trainee, he applied. This time, after taking the same three-hour test again, the phone rang off its hook. Apparently, what made the difference is his answer to the question: “Would you rather be a, ballet dancer or orchestra conductor?” The first time he chose “ballet dancer” but the second time he chose “orchestra conductor”. Since he spoke English with a heavy accent, he was assigned to INA’s International Department. After six years, he became the youngest officer of the company. When his accent abated, he was transferred to the domestic operations and he was put in charge of INA’s nationwide construction and energy insurance portfolio.

Disenchanted when bypassed for a sought-after promotion, he left the INA (which became part of CIGNA in 1982) to join a reinsurer as Senior Vice President, Research and Special Risk, a newly created unit. Akos’ new responsibility was to research and underwrite new lines of business. After a few years, the CEO and COO of the company were recruited to start a new reinsurer company, and Akos jumped at the opportunity to become its Chief Underwriting Officer. After leaving the reinsurance business, Akos tried but failed to create a firm to process certificates of insurance. After running out of money, he re-entered the insurance business for a short while and founded IRCOS, LLC in 2000 and IEN in 2005.

Akos always had a penchant for unusual risks and coverages. He has underwritten surface to air missiles in storage in Saudi Arabia, nuclear power plants in Japan, Korea and Iran, an underground gas storage facility in upstate New York, business interruption on a bauxite hauling railway in Guinea, North Sea oil platforms, launch and life insurance on communications satellites, standing timber on Mount St. Helen, system performance coverage for a corn to ethanol plant in Indiana, etc.

He has been retained as an expert witness over 150 times in cases ranging from homeowners’ claims to a several hundred-million-dollar claim involving a shipyard damaged by Hurricane Katrina. He has testified as expert witness in court and arbitrations. His consulting practice includes two projects for an agency of the US Federal Government. The first time he was involved in arbitration, he was



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one of two candidates for umpire. The two parties agreed that the outcome of the closing Dow Jones Industrial average on a certain day would determine the winner, depending on whether the closing average was an even number or odd number. Akos selected the odd number and won. Not knowing much about the technicalities of arbitration, he joined ARIAS-US and became a certified arbitrator.

Early in his career, at the urging of a former colleague, he started to study for his CPCU designation. Back then it was a five-part series, two parts being insurance. He passed the non-insurance parts with flying colors but flunked both insurance parts. Eventually, he received his CPCU designation in 1976. During the last 10 years, he has been a member of the CPCU Society's Coverage, Litigators, Educators & Witnesses ("CLEW") Interest Group Committee.

Akos is a former Chairman of the Conference of Special Risk Underwriters. He maintains insurance producer or broker licenses in several states. Akos joined AAIMCo over three years ago and continues to be awed by the depth of knowledge and expertise of AAIMCo members. Attending AAIMCo meetings is the best industry event. Over the years he has been presenter or panel member at RIMS and CPCU meetings or webinars. He has published articles, and the first one, *Insurers: To Rescind or Not to Rescind*, is included in this newsletter.

In his 49 years in the insurance business, Akos never had a boring day. At age 73, he does not have time to think about retirement nor has any interest in retiring. He adopted the view of a fellow AAIMCo member about retirement, who said: "I retire only when I am mentally unable to do work. Come to think of it, that should have happened ten years ago."

### Personal Background



Akos was born in Hungary and two weeks after high school graduation he immigrated to the USA to join his parents, who came to the USA as refugees eight years before. His father was a political prisoner, who was freed during the 1956 revolution. Akos did not speak one word of English, until he got on the plane to come to America. The first English word he learned from a flight attendant was "beer". After three months and learning 200 words, he got a job as a delivery man's helper at Sears. After he was laid off, he went to Philadelphia, where he became a factory worker, only to be laid off for "lack of ambition." His next job was organ tuner and he also started taking evening courses at the University of Pennsylvania. He received his bachelor's degree from Temple University.

After the death of his first wife, he married Ann, the love of his life. Ann has two children from her first marriage and four grandchildren. Akos does not have any children of his own. Ann's children and grandchildren quickly accepted him into their family. Akos continually brags about Jared, who at age five, when Ann and Akos were in the first few months of their marriage, asked Akos instead of Ann to take him to bed.

Akos does not have any hobbies but likes to travel with Ann. They spent their honeymoon in China and since then they visited dozens of countries. A couple of years ago, they realized that in order to check off every item on their bucket list, they had to live to be 120 years old. They solved the problem: now they are taking two trips per year instead of one, so they need to live only 110 years. This year it will be Japan and Poland.

# Spotlight Article »

## Insurers: To Rescind Or Not To Rescind?

**Akos Swierkiewicz, CPCU**

Rescission of an insurance policy is serious business. Such action could result in serious financial difficulties to insureds, especially if it occurs after a major loss. Furthermore, costly and protracted litigation almost inevitably follows to contest the rescission.

Fortunately, insureds and their brokers can minimize the potential for rescission by simply exercising greater care to ascertain the accuracy of underwriting information, and by providing all material information to insurers. Also, rescission decisions are made by insurers only if they are convinced that they have adequate justification for them.

An insurer may rescind its policy in the event of material misrepresentation or concealment of a fact by the insured. Misrepresentation is false statement of a fact by the insured. Concealment is the neglect to reveal a fact that the insured knows and ought to communicate to the insurer.

Misrepresentation or concealment is material if it affects the underwriting decision of the insurer. For example, the premium would have been higher had the insurer been aware of the true and complete facts.

Property-casualty policies typically include conditions pertaining to the subject of rescission, such as:

- The policy is issued in reliance upon the truth of representations made by the insured.
- The policy is void if the insured intentionally conceals or misrepresents a material fact.
- The insured, by accepting the policy, agrees that the statements in the policy declarations are accurate and complete.

In most cases, rescission is based on materially misrepresented facts in the policy application, or in underwriting information provided by the insured or its broker. However, unless there is a satisfactory answer to each of the following questions, the rescission is not justifiable:

- Is the fact known only to the insured?

If the insurer possesses a fact that differs from what the insured had provided, then it must attempt to reconcile it before proceeding further with consideration of rescission.

- Is it false?

The insurer must have incontrovertible evidence to demonstrate that the fact obtained from the insured is false.

- Is the falsity material?

Materiality is determined within the context of probable and reasonable influence on the insurer by the false fact. Consequently, if the insurer's underwriting decision is not affected, then the falsity cannot be deemed material.



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- Is it reasonable to rely on it?

The insurer cannot reasonably rely on a fact received from the insured alone if it is aware of a conflicting fact.

- Did the insurer rely on it?

There must be clear evidence to demonstrate that the insurer did rely on materially false facts when making its underwriting decision.

State insurance codes and legal precedents also have an impact on the insurer's decision-making process concerning rescission.

For example, the California Insurance Code allows policy rescission even in cases of unintentional misrepresentation or unintentional concealment, and it provides that materiality is to be determined solely by the probable and reasonable influence of the facts on the insurer.

Also, case law precedent prevents insurers from relying solely on representations contained in the policy application or underwriting information if an inspection of the insured's property is conducted.

A policy may be rescinded even after a loss that would otherwise be covered by the policy. Since rescission could have severe negative financial impact on the insured, the insurer must be certain that the reasons for rescission are based on solid grounds and able to withstand potential legal challenge.

In a 2001 case, an insurer rescinded their policy following a major fire loss, alleging material misrepresentation and concealment by the insured, pertaining to several matters, including square footage of the premises.

The pre-trial discovery proceedings included examination of ambiguous questions contained in the insurer's application form, and the accuracy of the inspection report provided by an independent inspection company retained by the insurer.

Major weaknesses emerged in the insurer's justifications for its decision to rescind the policy, including:

- The insurer previously issued policies for a previous owner, covering the same premises, and therefore it had prior knowledge of the underwriting information, including square footage, which differed from what the insured had provided.
- Just because the square footage information provided by the insured differed from the prior information in the insurer's underwriting files, it was not sufficient for the insurer to conclude that the insured's statement is false, especially since its insurer failed to make any attempt to reconcile the difference.
- The square footage figures provided by the insured and its broker in the application were lower than the figure in the inspection report that was ordered by the insurer after it issued the policy. In asserting materiality, the insurer disregarded another inspection report subsequently ordered by the insured, which confirmed the original figures in the application for the policy.

Based on the above points, it was not reasonable for the insurer to rely on the square footage information provided by the insured, and the insurer's contention that it did rely on the square footage data provided by the insured was questionable.

Although this case was resolved and the insured received payment for its claim, the pre-trial discovery process took over a year, with detrimental financial consequences to the insured.

The lesson from cases like this is that all parties should take thorough measures to ensure the accuracy and completeness of underwriting information, and that conflicts or ambiguities are promptly resolved before coverage is bound.

The above article was published in the 12/8/02 National Underwriter

# Annual Conference 2020

Our **2020 Conference** will be held in **New Orleans** at the brand-new Higgins Hotel across the street from the National World War II Museum. The Conference will take place Thursday afternoon, May 7th through Saturday afternoon, May 9th.

In selecting New Orleans we're revisiting the city where we held our 2011 Conference. From Bourbon Street to beignets, New Orleans is unlike any other city you've ever experienced. A modern port city and commercial hub, New Orleans consistently ranks among the most celebrated destinations in the world, thanks to 300 years of history, music, art and architecture. The Higgins is located in the Warehouse District, about ten blocks West of Canal Street, the gateway to the historic French Quarter. The Warehouse District is a neighborhood brimming with artists and art galleries' glass blowers, and many other attractions.

We are planning the same meeting format as this year's conference, to add more content, and end a little sooner. As in the past we will have an initial meeting beginning at 1:00 PM on Thursday afternoon, but the meetings on Friday and Saturday will be longer – from 8:30 a.m. to 3:30 p.m. to accommodate more content. For those wishing to do so, that will also enable a Saturday rather than Sunday departure.

