

Member Newsletter

Issue 38 | June 2020

President's Message »

2020! WOW!

I look back at my address from February and see that it started off with the above statement. As we consider the circumstances of the world we live in right now, I think a more appropriate statement now might be ...

2020 Awww S***! (Always in good humor!)

I think back to when we started planning for NOLA 2020 and how the theme would be "The Year of the Insurance Expert", never realizing just how accurate that theme might actually become in the face of what has transpired so far. Society – specifically the business community – is rapidly coming to the realization that individuals involved in the insurance industry may turn out to be some of the most important people to have connected to their day-to-day business activities.

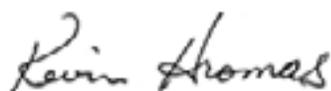
As litigation continues to mount in the face of business interruption coverage that may ... or may NOT ... be available under specific policies, I see a growing need for the expertise found within our ranks. Either as experts in the litigation process or as experts in providing advice on risk management, the opportunities are substantial for our involvement. If you have the chance to recommend a fellow member in a matter, that is always appreciated.

The Board of Directors continues to look for avenues to increase the exposure for AAIMCo members through a variety of digital platforms. Lee Hoffman is working with our web designer to introduce ways for posts made in our discussion forums to also be posted to LinkedIn ... only with the poster's permission of course. Since so many individuals seem to have a lot of free time on their hands, I have seen an increase in traffic on LinkedIn and in the discussions that transpire there. If you do participate in those discussions, please keep in mind to be professional in your demeanor and comments. That can only serve to solidify AAIMCo's reputation as a professional organization.

Our new 2nd VP – Brent Winans is eagerly settling into his position as the Membership Chairman and welcomes any suggestions you might have for possible new members. If you know of someone who might be a good family-fit for AAIMCo, please get their information to him and he will reach out to them with an invitation to apply for membership through the online process. As always, suggestions from current members is the best avenue for recruitment.

I hope everyone is staying safe and in good health.

Keep calm and AAIMCo on!



Kevin Hromas

JD, EGA, RPA, PLCS, HCRI-R/C, CPIU

US Insurance
Information, LLC

Cypress, Texas

(713) 416-8044

KH@KevinHromas.com



Association News »

Brent Winans – IRMI Publication

The COVID-19 pandemic and its aftermath will likely result in an unprecedented number of E&O claims. What can you do to keep from being sucked into a swirling litigation vortex? Florida Member, **Brent Winans**, touches on the “do’s” and “don’ts” that agents should follow to minimize their chances of E&O claims and advises steps that agency managers can take to minimize the disruption in their agency’s processes. The article was published on the IRMI website under the Covid-19 Resources Expert Commentary section. To take a look at the article, please [click here](#).

Chantal Roberts – UMKC’s Speaking Opportunity

Chantal M. Roberts, CPCU, AIC, RPA will speak at UMKC’s 2020 Hot Topics in Law and Practice CLE event on Friday, June 19, 2020 (with a rebroadcast on Tuesday, June 23, 2020). Her topic will be Marijuana Insurance Coverage and Claim Trends, which she previously taught in January 2020.

Roberts’ class has been approved for one hour of CLE by the Missouri bar; Kansas and Illinois hours are currently pending.

CPCU Society – CLEW News, Spring 2020

The spring issue of the CPCU Society’s CLEW Newsletter turned out to be a AAIMCo publication, with five out of the six articles published being authored by current or former AAIMCo Members. The entire newsletter was focused the many aspects of “Expert Witnesses”. Maryland Member, **Stanley Lipshultz**, contributed his article titled, “Preparing The Expert’s Report” and includes a list of suggestions to consider when preparing a report. **Bill Wilson’s** contribution, “What Is An Expert”, reviews the true attributes that make someone an “Expert”. And last but certainly not least, regular contributor **Kevin Quinley** authored “Maximize Your Deposition Effectiveness by Knowing Your Aims...and Opposing Counsel’s!”. Mr. Quinley lays out the objectives to look out for when it comes to both your side and the opposing council’s side.

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 »



Here I am “bull riding” at the San Antonio fairgrounds during our conference 2018. Now anyone who knows one end of a bovine from another would say, “Brent, that’s no bull!” Which is exactly my point. As your new 2nd VP and Membership Chair, I hope to contribute dedication and a little fun to this great organization, but no bull.

So here is a story with a point. Shortly after accepting this position, I received an email from Kevin Quinley recommending a possible new member he had heard speak. I looked up his website and picked up the phone to tell him how much my membership in AAIMCo had benefited me. He was immediately impressed that Kevin was a member, and before the week was up, he had submitted his membership application. Hopefully, before the next newsletter is published, he will join our ranks. Who do you know that you have great respect for and would like

to see become an AAIMCo colleague? Pick up the phone and tell them so, or send me their information and I will contact them. Let’s make this strong organization even stronger.

Van Hedges has certainly done his part this past quarter! He encouraged both of our two newest members to join AAIMCo, and he recommends them both as insurance executives with decades of experience and extraordinary knowledge and ability. They both hail from the great state of Mississippi.



Thomas G. Quaka, CPCU
tquaka@att.net
601-956-1441
5104 Canton Heights Dr., Jackson, MS 3921

Tom has spent over 50 years in the insurance industry. Most of his career has been on the company side, with his last ten years as Senior Vice-President of FCCI Insurance Group, a super-regional commercial lines P&C carrier headquartered in Florida. Tom is recognized nationally in insurance education. He was a twenty-year member of the national faculty of the Certified Insurance Counselor Institute. His consulting practice now is focused on litigation support, and he has served as an expert witness in coverage, bad faith and agent ESO litigation.



Jack C. Williams, Jr., CPCU, AIC
jcwj212@gmail.com
601-941-7167
212 Ironwood Plantation Blvd., Madison, MS 39110

Jack began his career with the Southern Farm Bureau group of companies in 1976 as a claims representative and worked his way up through the company. In 2009 he was named the President-CEO of the Mississippi Farm Bureau insurance operations and served in that capacity until his retirement in 2018. He is now serving as an expert witness on claims involving bad faith and claims administration.



**Brent Winans, ARM,
CPCU**

Clear Advantage Risk
Management
Delray Beach, Florida

(561) 276-9158

bwinans@cleararm.com

Treasurer's Report »



Russell M. Taylor

Risk Management
Tactix

Spring, Texas

(281) 257-8585

russ.taylor@
riskmanagementx.com

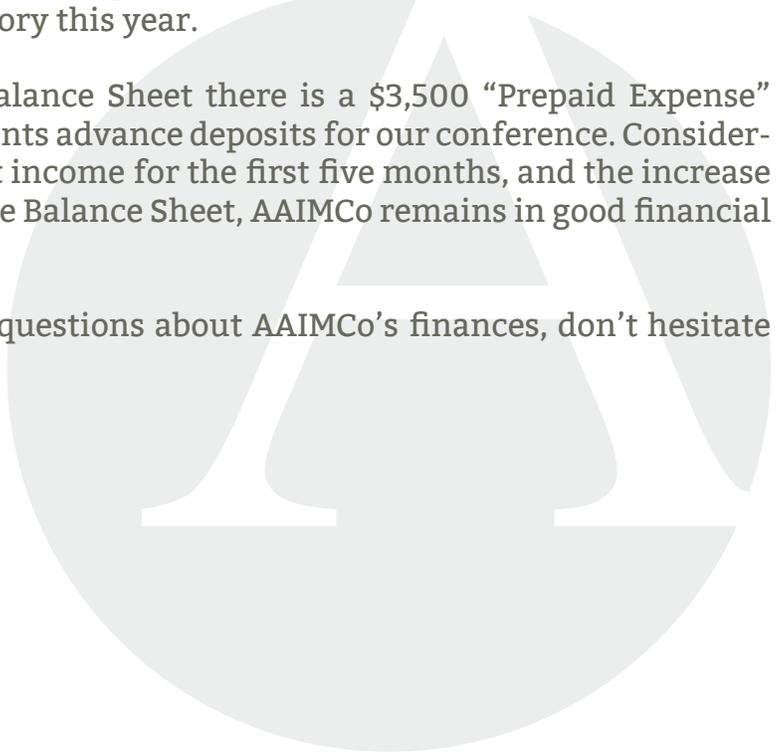
The accompanying exhibits provide the highlights of AAIMCo's financial position for the first five months of 2020 compared to the same period last year. This year's dues income is down by almost 15% compared to last year, due to the across-the-board reduction in annual dues for all members. And because of the cancellation of this year's AAIMCo conference, registration fees are understandably below the previous year. Since a portion of annual dues is set aside for our annual conference, we have a reserve we can apply to next year's conference.

Although the total dollar amount is a tad less, the three referral fee contributions made during the first five months of 2020 matched the three we had during the same period last year. Contributions were made by Kevin Hromas, Kevin Quinley, and me. As a reminder, while participation is entirely voluntary, we encourage you to consider making a token contribution each time you receive referral work from a fellow member or through your AAIMCo website listing, with the recommended amount being equal to an hour of your billing.

On the expense side, except the big drop in conference expenses most other expense items are comparable to last year. And since we completed the web site redesign project last year, we had no similar expense in that category this year.

As noted on the Balance Sheet there is a \$3,500 "Prepaid Expense" item which represents advance deposits for our conference. Considering the positive net income for the first five months, and the increase in total equity in the Balance Sheet, AAIMCo remains in good financial shape.

If anyone has any questions about AAIMCo's finances, don't hesitate to contact me.



Treasurer's Report



Russell M. Taylor

Risk Management
Tactix

Spring, Texas

(281) 257-8585

russ.taylor@
riskmanagementx.com

Balance Sheet

	June, 2020	June, 2019
ASSETS		
Current Assets		
Checking / Savings (Woodforest)	48,130.40	37,917.72
Accounts Receivable	676.00	400.00
Total Current Assets	48,130.40	38,317.72
Other Assets		
Accum Depr - Sect 179	-600.35	-600.35
Epson Projector	600.35	600.35
Prepaid Expense	3,500.00	0.00
Total Other Assets	3,500.00	0.00
TOTAL ASSETS	52,306.40	38,317.72
LIABILITIES & EQUITIES		
Equity		
Opening Balance Equity	5,265.39	5,265.39
Retained Earnings	30,817.31	21,879.71
Net Income	16,223.70	11,172.62
Total Equity	52,306.40	38,317.72
TOTAL LIABILITIES & EQUITIES	52,306.40	38,317.72

Profit & Loss Statement

	June, 2020	June, 2019
INCOME		
Dues		
Dues - New Affiliate Member	240.00	225.00
Dues - Affiliate Member	720.00	900.00
Dues - Associate Member	144.00	540.00
Dues - Retired Member	72.00	180.00
Dues - New Associate Member	406.00	165.00
Dues - New Professional Member	1,031.00	975.00
Dues - Professional Member	12,000.00	14,100.00
Total Dues	17,613.00	17,085.00
Referral Fees	975.00	1,150.00
Application Fees	175.00	150.00
Conference Registrations	5,200.00	21,489.00
TOTAL INCOME	20,963.00	38,205.00
EXPENSE		
Administrative Services	500.00	500.00
Conference Expense	0.00	22,295.07
Executive Director Services	2,000.00	2,000.00
Insurance	1,275.00	1,275.00
IT Services and Hosting Fees	800.00	360.00
Other - Misc. Expense	164.30	271.31
Website Design Project	0.00	2,000.00
TOTAL EXPENSE	4,739.30	28,701.38
NET INCOME	16,223.70	11,172.62

Member Spotlight »

Mark L. Pollack, CPCU, AIC, RPA

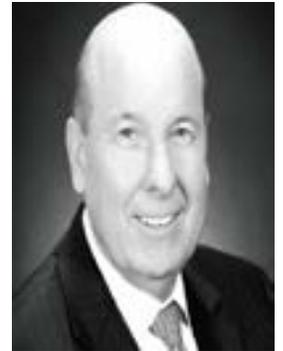
After active duty in the US Army, I returned to Little Rock, Arkansas in 1970 to find work. I began working at a local auto dealership in the parts department and soon found out one never knows who may be watching your activities and judging you as a potential asset to their business needs. A man named William Huffstutlar gave me my first experience with insurance when he hired me to work in his parts department at the largest heavy equipment repair facility at that time in Arkansas, H.C. Inc. H.C. specialized in the repairs of diesel trucks, trailers, and off-road heavy equipment such as cranes, agricultural equipment, backhoes, bulldozers, etc. William watched me as a parts salesman at a local super duty Ford dealer and noticed I took interest in his needs and his business, so he hired me to assist his organization as a parts manager.

During my tenure at H.C., I worked with insurance adjusters who came to the repair shop to inspect the damaged equipment on behalf of the insurers they represented. I also worked with adjusters who staffed a desk by sending them photographs of the damaged units, writing an estimate of repair on their behalf so they could then pay the insured what it cost to repair the damaged units. In the event the equipment was deemed a total loss, I would submit salvage bids in the hopes of purchasing the damaged units to repair or sell parts off the units as demand presented itself. Having worked at H.C. for 18 years and rising through the ranks to Vice President, I recognized that William had no heir to assume the business upon his retirement or departure. I also recognized that if I were to buy the business the debt could not be amortized such that a profit would be possible along with pouring money back into the business for the infrastructure it required to stay competitive. In other words, if I bought H.C. I would simply be working for the lender as opposed to myself so I started looking around for other opportunities.

Since the insurance industry had come to know and trust me during the years I worked at H.C. I took a look at becoming an independent insurance adjuster. Quite frankly, I somewhat envied the adjusters who would visit the shop. They all wore shiny shoes, drove nice automobiles, had on suits in many cases, and seemed to have posh positions that paid well if appearances meant anything. So I naturally made inquiries and found I would need to polish up my education.

I then attended the University of Arkansas at Little Rock and over the next 5 years of attending night school obtain a bachelor's degree in finance and insurance, while at the same time obtaining my independent adjuster's license and Associate in Claim designation from the Insurance Institute. Now I was ready to tackle my new career and start wearing shiny shoes!

I hung out my shingle and started making phone calls to my insurance industry contacts in America and low and behold, business started coming my way. When starting the business I looked for an easy to remember acronym and came up with Affirmative Risk Management, a.k.a ARM. I was also looking for something that would get me in the yellow pages as the first business under Adjusters. Little did



Mark L. Pollack
CPCU, AIC, RPA

Affirmative Risk Management

Little Rock, Arkansas

(501) 725-3374

mark.pollack@armusa.net

I know at that time, insurers do not look in the yellow pages for adjusters, they depended on referral, or recommendations, memberships to professional organizations, etc.

Ralph Brink with Firemans Fund gave me my first assignment on a hydraulic excavator and I was off to the races. As a side note, 14 years later, Ralph was working for ARM as an adjuster. The business prospered and grew over the next 31 years. Remember my comment earlier that one never knows who is watching you, well the English were watching me. Within a year of starting ARM I started receiving faxes from London with assignments to inspect damaged equipment and report back to the Underwriter at Lloyd's of London. London knew me, but I did not know anyone there, nevertheless I was very interested in their books of business and wanted to know more, so I started saving the fax coversheets from the various London brokers and Underwriters. I found many of the fax coversheets to be cool with pictures of dragons, shields, and other crests on them from England.

After gathering up a dozen or so, I made my plans and went to England to call on those that were sending business to me so I could put faces to names and corporations in addition to thanking them for the business. I made no advance appointments, I made no advance phone calls, and really had very little in mind as to what to expect, but I went anyway. I used the fax coversheets I had saved, looked in the A-Z (mobile phones were not around then, nor was any electronic maps) and found my way to each of the addresses in London so as to introduce myself.

I'm not sure to this day what the English thought of me as a first impression, but it must have been a good one. All I said was, "Hi y'all, my name is Mark Pollack and I'm here to thank you for the work you've sent my way!" And then I handed them the fax coversheet so they could connect the dots. From there over the next 25 or so years Underwriters at Lloyd's became ARM's biggest and most loyal book(s) of business. During this time ARM progressed from being an independent adjusting firm to a third party claim administrator with over 8 million dollars in annual sales. The company grew to over 70 employees and ARM was handling claims in 49 of our fifty states (Alaska was the only state where we were completely out of our element), in addition to Puerto Rico, and Canada. Not bad for a country boy who's first job in Stuttgart, AR at the age of 12 was working in the rice fields for \$.60 an hour, 12 hour days, 6 days a week. ARM expanded in its services to include handling claims regarding commercial property and casualty, personal lines coverage, energy, aviation, dealer open lot, dram shop, marijuana growers and distributors, along with many other lines of coverage including heavy equipment.

In 2005, after hurricane Katrina I was approached by a law firm in Jackson Mississippi to serve as an expert witness regarding the Lloyd's market; how the insurance industry handles claims; and to opine on whether the case in question involved flood which was excluded by the Lloyd's policy. Without going into too much detail, the basic fact upon which I relied to support a flood claim pursuant to the language in the policy, and the common definition of flood was the fact that during hurricane Katrina a shrimp boat named the Luna Sea went through the lobby of a gambling casino located in Gulfport, Mississippi while afloat. I didn't think it would take an insurance expert to convince anyone a shrimp boat being pushed by high wind and water when it entered and then exited the lobby of the hotel was not due to flood, but what did I know at that time? I now know the legal profession can take simple words and wrap them around the axle so tight, that no one will leave the courthouse without scratching and shaking their heads.

From that first jump into the expert witness swimming pool to now, I've been engaged in dozens of cases and through this experience, I've been able to hone the practices of ARM to avoid the pitfalls I've seen insurers fall into to their detriment. It is the best way to learn "best practices" and this profession has served me and ARM's employees well for the last 15 years.

As my career continued and my business grew, I continued my education by obtaining a Chartered Property Casualty Underwriter (CPCU) designation from the Insurance Institute of America. In addition, I've had the privilege of teaching insurance courses as an adjunct professor at the University of Arkansas. Once again, not bad for a country boy who didn't graduate high school until disobeying a direct order at Fort Eustis, Virginia to not go to the education center on the night of my test to obtain a GED.



I could not have done any of this alone however, and I will never forget the many men and women that made it possible for ARM to become one of the premier TPA's in America in regard to the Lloyd's market. I would be remiss not to mention my family with emphasis on my wife Patricia, and daughter Chantal who supported me, forgave me for missing family events, and being an absentee husband and father far too often. Without the underpinning of a great family, and wonderful employees/partners, I would not be where I am today.

As for today, I have sold the business to Canadians who are carrying on with the business model, but not the name. The acronym I so carefully chose, ... ARM will be a distant memory soon and has been replaced with the name IPG Claims. I have retired from handling claims or supervising claims handlers, but I have not given up my expert witness practice. I find this to be stimulating, and as odd as this may sound, ... Fun. The Covid 19 virus has wreaked havoc on the courts and all my pending cases are currently being pushed further back on the dockets, but I think that will soon start to change. I have had my first deposition via Zoom and that was a truly odd experience with lots of kinks to be worked out.

I have also had the opportunity to make referrals regarding expert cases that fall outside my sphere of expertise to members of the AAIMCo family which is rewarding. I find membership in AAIMCo to be insightful and worthwhile. The intellectual resources of the membership of AAIMCo is truly a great resource.

In conclusion, I have been asked to mention a hobby and to include a few photos. My hobby is history, with emphasis on the American Civil War. I have two civil war canons, one is a Napoleon 12 pounder, and the other is a 12 pounder mountain howitzer. Why two canons? The simple answer is...because sometimes one is not enough.

The 12 pounder refers to the weight of the canon ball these guns shoot. I have been to many civil war reenactments with my team(s) including Gettysburg. I have competed in live fire shooting of canons at targets set at 1000 yards. As for the Napoleon, it takes 2.5 pounds of powder to send the canon ball one-mile down range. The noise from the gun is hard to believe and if you have five or six firing at the same time, the smoke completely blocks all view down range and noise is deafening. When these guns fire, the recoil will be as much as 10 feet back. The two positions you don't want to be is in front of the gun, or behind the gun. Both places will ruin your day. Moving, manning, and firing a muzzle loading canon gives me great respect for the men who fired these guns hundreds of years ago.



Spotlight Article »

And The Question is?

Mark L. Pollack, CPCU, AIC, RPA

I have been asked to present a technical article I may have written that would be of interest to members of AAMICo. Given the varied interest of the membership, and my lack of talent when writing technical papers, I hope the members who are new to expert witness, or even some of the grizzled old coots and veterans will find the following questions and proposed answers helpful and interesting.

During the time I was first gaining experience as an expert witness, I attended several conferences sponsored by Seak, Inc. Seak Inc. is an expert witness training company. I recommend attending their seminars and conferences if you feel you can use more training regarding this profession. Many of the questions below were obtained from training sessions I've attended at Seak sponsored events, some are based on my experience; however, the proposed answers are all mine based on my training with Seak, or experience in depositions and court testimony. Depending on whether your practice is primarily focused on defense of insurance claims, or the plaintiff's side of the case, you can interchange the wording in the questions to fit your circumstance.

I would be interested in feedback from you as to any odd, offensive, dumb, or brilliant question you've been asked by opposing counsel that threw you off balance as I learn from the experiences of others with equal enthusiasm as my own experiences. Please feel free to send me your experiences and what your answer was, or what you wish your answer had been if given more time to think about a response. My email address is mark.pollack@IPGClaims.com and I look forward to expanding this list of question with your permission.

1. During your direct examination, you answered the questions and cooperated with counsel. Will you give me the same cooperation you gave the Defense Attorney?

This is an attempt by the plaintiff counsel to insinuate that you will not answer questions truthfully. The best response to a question such as this is:

"Counselor, I gave an oath to tell the truth in this matter. You can count on me to tell the truth and cooperate with you to the best of my ability."

2. Will you agree to answer my questions with either a "yes" or "no"?

Do not agree to this deal. The correct answer to this question is:

"Counselor, I am not able to agree to answer the questions as you wish for several reasons. The first reason is I do not know what the questions are, so I am unable to agree to answer the questions with a yes or no. The next reason I am unable to answer your questions with a yes or no is because an artfully worded question that you wish to have answered as a yes or no may lead to confusion on the part of the jury."

3. You enjoy the adversarial questions and answers in cross-examination, don't you?

"Counselor, I do not enjoy the process of resolving matters such as this in the court."

4. Do you agree that the consequences of your testimony here today could have a serious impact on the life of the plaintiff?

"Counselor, I am unable to speculate on how the jury will view my testimony and whether their analysis of the answers I give today will have any impact on the life of your client."

5. Are you acting as an advocate for the defendant here today?

"Counselor, I am here today to answer questions truthfully. Defense counsel is the advocate for the defendant in this matter."



Mark L. Pollack
CPCU, AIC, RPA

Affirmative Risk Management

Little Rock, Arkansas

(501) 725-3374

mark.pollack@armusa.net

6. You as an adjuster are holding yourself out as an authority for the side that's presenting a particular proposition in this legal case, correct?

The word "authority" is an ambiguous word that could have many meanings. The witness should listen carefully to the questions being posed and if any term is being used by opposing counsel that could have more than one meaning, the witness should ask for clarification as to the definition assigned to the particular word "authority" the plaintiff counsel is using. Once the word is defined, the witness should do their best to answer the question.

7. Do you think the defendant in this case should prevail?

"Counselor, I am not here to offer an opinion as to who should prevail in this case. I do believe the insurer has acted in a reasonable and prudent manner given all of the facts as known when decisions were being made. Nevertheless, it is up to the jury to decide who should prevail in this case."

8. Are you aware that you are under oath and that your responses will in essence become part of your permanent record that can be brought up in all future cases that you testify in?

The way this question is posed is meant to intimidate and cause anxiety to the witness. Do not let the opposing counsel use tactics such as this to throw you off-balance. Of course the answer is you are aware you are under oath, and you have sworn to tell the truth, and you will, and that you have no concern that the testimony you give in the present case will be brought up in future cases.

9. Do you often testify in court as an adjuster?

Once again the word "often" is an ambiguous term. Often can mean every two to three days, dozens of times, or it could have other meanings. It could also indicate that there are many law suits against your principal if you are testifying on a regular basis. The best answer is to simply state that you testify when you are called upon to do so, and then give the answer to the number of times you have testified premised upon the number of the years you have been in the adjusting profession. As an example, a suitable answer is:

"I have testified in court on every occasion I have been asked to do so. In my twenty years as a claims adjuster, to the best of my recollection, I have testified in three cases."

10. How many times have you testified in the last four years?

Not necessarily a trick question, but one the witness should know. Do not make guesses at this question, but simply answer it in a truthful fashion.

11. Do you enjoy being an adjuster?

You should simply state if you enjoy your profession. Be prepared for a follow-up question that could go into great detail. This is the time you can use a leading questions to get in testimony you feel will be beneficial to your position. Always be on the lookout for words such as "Why?"

12. Please describe the practical training you have had in your field.

Know your education and training background completely and be prepared to provide any and all relevant training and education which is relevant to your current profession.

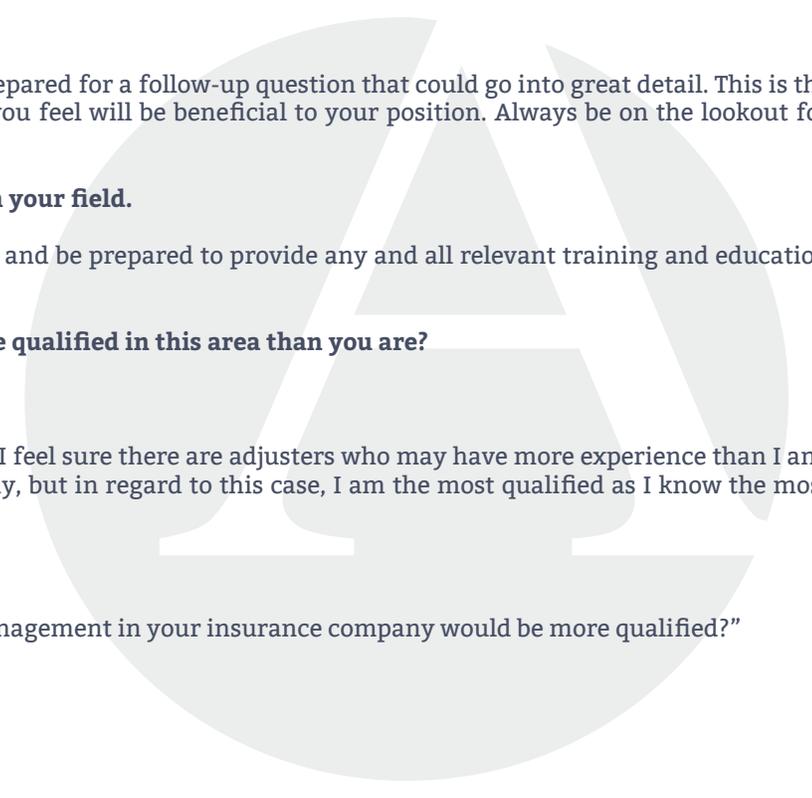
13. Are there adjusters in the United States who are more qualified in this area than you are?

The best answer to this question is:

"The question calls for speculation on my part. Regardless, I feel sure there are adjusters who may have more experience than I and therefore may be more qualified than I am in a general way, but in regard to this case, I am the most qualified as I know the most about this matter."

Be prepared for a follow-up question such as:

"Do you feel your immediate supervisor or other senior management in your insurance company would be more qualified?"



The proper way to answer this is:

“Once again, I cannot speculate on my supervisor’s qualifications, although I will concede he/she has more experience than I. In this particular case, I know more of the details than my supervisor; therefore, it is my opinion I am the most qualified individual with the most knowledge of the fact pattern surrounding this matter.”

14. Part of your function as an adjuster is to be persuasive, correct?

“It is neither my duty nor a function of my position to be persuasive.”

15. Do you consider yourself smarter than most of the people on the jury?

This is a setup question that cannot truly be answered with a yes or no answer because of the sarcastic way it is posed. The best way to answer this question is:

“Counselor, I am not here to offer testimony as to who may be more intelligent than another. Furthermore, I do not possess the expertise to offer an opinion as to who is the smartest person in the courtroom.”

16. At trial you will try and persuade the jury, correct?

“Counselor, I will answer the questions you pose in a truthful manner. If the jury finds my answers to be persuasive, then they will provide a ruling accordingly.”

17. What kind of adjustments do you make to the claims you handle?

This is a leading question which can give the witness a good opportunity to provide insight into the particulars of the claim in question. Be careful when answering a leading question such as this, as the follow-up questions could place you in an awkward position. Simply stay within the relevant facts of the case at hand, and do not venture from that area.

18. Are you nervous?

You will have the complete attention of the jury as you are testifying. They are very interested in hearing your answers and will be very attentive to same. Furthermore, the jury will empathize more with you as a witness than they will with any of the other parties who are at trial such as the attorneys, and other legal professionals. Jurors will know that you are nervous, especially if you do not speak in front of the public on a regular basis. It is quite alright to humanize yourself by stating that you are nervous and you either have not testified in court in the past, or that speaking in front of people makes you very nervous.

19. Your so-called online AIC degree is really a mail order degree isn't it?

Do not take the bait when opposing counsel wants to diminish your credibility by attacking your credentials. Do not embellish your credentials by listing frivolous or accreditations that are not fully supported by a strenuous academics background. To do so will open you up to attack by opposing counsel.

20. You are nothing more than an insurance hack, correct?

Once again, do not take the bait on this inflammatory question. Simply ask the opposing attorney to define “insurance hack”. Opposing counsel will not have a flattering definition of insurance hack; therefore, after he has defined the term you can answer it in a truthful way, and the jury will be able to recognize this tactic. Oftentimes, these types of questions cause jurors to disregard any further questions posed by counsel.

21. Do you still have substance abuse problem?

Answering this question with a yes or a no in essence admits that you at one time had a substance abuse problem.

If at some time in the past you have had a substance abuse problem, such as alcohol, and you are no longer dependent upon same, simply answer the question along the following lines:

“I have been alcohol free for the last sixteen years. I continue to attend meetings to maintain my sobriety, and my former problem did not affect my judgment in the handling of this claim.”

Make sure your counsel knows of any history of substance abuse problems and your current status related to same. It is very possible opposing counsel will find this information out and use it to attack your credibility and to throw you off balance during deposition or trial testimony.

If you have never had a substance abuse problem, the best way to answer this question is:

“Counselor, I have never had a substance abuse problem. Do you have information to the contrary?”

22. Why did you leave your last job?

If the reason you left your last job is not embarrassing or speaks to your integrity or credibility, simply state the reason. On the other hand if you left your last job for reasons that could speak to your credibility in the current matter discuss this with your counsel, and diffuse this question before it is asked by having your counsel touch on this subject during your direct testimony.

23. Please name every person that knows why you left your last job?

“Counselor, I have no idea of the number of people that have any knowledge of why I left my last job. My supervisor at XYZ Insurance Company is Mr. Bob Smith. Mr. Smith knows the reason I am no longer employed at XYZ Insurance Company.”

You are not expected to know everything. Anytime you hear words such as “all”, “every”, and “how many” you should be wary of that question.

24. Have you ever failed a test?

“Counselor, I dare say everyone has failed a test at some time in their life. I failed an Algebra test when I was in the ninth grade.”

25. Did you review your professional canon of ethics while working on this claim?

The underlying premise of this question is that you had some ethical dilemma posed upon you while handling the claim. The best answer to this trick question is:

“I saw no reason to review my code of ethics regarding the handling of the claim because I was not confronted with an ethical dilemma.”

Be prepared for a follow up question such as:

“Please tell me your professional code of ethics.”

The best way to answer a question such as this is to simply state:

“I have not committed the code of ethics to memory. I have a general understanding and knowledge of the code of ethics, and I will not be able to recite each of the codes of ethics at this time.”

You should familiarize yourself with your code of ethics, and I suggest having a copy of same with you so you can further offer to read the code of ethics into the record. Most of the time, the opposing counsel will not want to go to this much trouble and will move on with his line of questioning.

26. What protocol did you follow in this case?

Normally speaking every seasoned adjuster has a series of steps they follow when handling a claim. Be careful when answering this question and becoming expansive. You should narrow your answer to the case specific protocols that were followed, and give a truthful and concise answer in this area.

27. You would agree that an adjuster should consider every relevant factor before arriving at a decision regarding this claim?

Please note the word “every” in this question. The best answer to this question is:

“I considered all of the factors in this claim that were presented to me and arrived at my conclusions based upon same. Do you have any factor you feel relevant that I may not have considered?”

By answering the question with a question you turn the table on opposing counsel and force him to provide you information which he feels is important. You can then either answer his follow-up questions regarding what he feels is important, or if handed a series of documents, seek a recess while you review these documents, and then analyze them while taking into consideration all other factors of the claim.

28. Did you evaluate both sides of this case?

“Counselor, I reviewed all of the information submitted to me by your client and outside sources before arriving at my conclusions. Do you have additional information you would like to submit to me for further consideration?”

Once again this answer is clear and concise and provide a brief summary of the information you relied upon. At the same time it will place opposing counsel on somewhat of a defensive, in that he will have to present new evidence for you to consider. Be prepared for follow-up questions on specific issues that you may not have considered.

29. Where there any other potential causes?

Once again be aware of all inclusive words such as “any”. The best way to answer this question is as follows:

“I considered all of the information presented to me when I made my decision in this matter. Are you aware of any causes of loss that were not reported to me that I should consider?”

Once again, this turns the tables on the attorney asking the question and forces him to define his position so that you would be better able to answer it. Do not speculate on any other issues that are not in your claim file.

30. What research and investigation did you do before forming your opinion?

Be prepared for this question as it will arise in almost all cases that are being litigated. Opposing counsel will traditionally pose this question during the discovery deposition phase. If you referred to any reference sources such as Couch or other claims guides, be prepared to cite the specific areas within these texts that you utilized when coming to your decision. Furthermore, be prepared for questions on those references during the trial. Opposing counsel will research these sources for any information that will cast doubt on your evaluation and use your sources against you. If you relied on the results of an outside source such as a field adjuster, engineer, cause and origin specialist, or accident Reconstructionist, be prepared to discuss their findings in detail. The best way to respond to a question such as this is to know your claim thoroughly and review it in detail before you testify.

31. What other potential causes of loss did you consider and reject before you arrived at your opinion?

Once again the attorney posing this question is asking you to provide him with information which he will then use to further question you. The correct answer to this question is:

“I considered all of the information submitted to me during the handling of this claim. Any potential cause of loss that was presented was given full consideration. Do you have any other cause of loss that you would like me to consider, Counselor?”

Once again, by answering this question in the above fashion, you are turning the tables back to the adverse attorney and putting him in the position to define any potential causes of loss he may have in mind. By doing it in this fashion you will not be providing him with information with which he can attack your credibility or position.

32. Have you reviewed any books, treatises, articles, or other written works in connection with your work in this case?

Please note the all inclusive word “any.” Be careful when answering this question, especially in a discovery deposition. Any publication that you refer to will be reviewed by opposing counsel to find any areas where you would be subject to attack or to point out a failure to follow some procedure or protocol listed in the publication you referenced. Furthermore, as a witness you are not expected to remember each and every book, treatise, article, or other written publications you may have referred to. If you did in fact refer to any documents or reference materials please be prepared to provide that information to opposing counsel in a truthful manner.

33. Please tell me all of the opinions and conclusions you may be offering at trial in this case.

Once again please note the all inclusive word “all”. This question is traditionally asked at a discovery deposition as it is intended to pin you down such that any deviations you have in your trial testimony may be impeached by your failure to list an opinion or conclusion that has led you to the decisions you made during the handling of this claim.

The best way to answer this question is:

“Counselor, I may not be able to remember each and every opinion and conclusion I reached during my handling of the claim in question. I can remember ...”

Once again, discovery depositions are not intended to be a contest involving memory. The chances are very great you will have documentation in the claim file that provides you with a road map of all of the information you considered when coming to your opinion as to the merits of the claim and the conclusions that were drawn from same. Always refresh yourself prior to testimony in regards to these areas, and use bullet points wherever possible when answering the questions.

34. Have you ever given an erroneous opinion?

Once again we have all-inclusive words of “ever given”. Although this question traditionally asks for a yes or no question, the best way to answer this is:

“People make mistakes. Sometimes mistakes are based upon incorrect information. I have arrived at incorrect opinions and positions based upon information that was not correct. When given all facts in every case, the opinions I arrive at are correct based upon the information I have been given.”

35. Please tell me each assumption you utilized or relied on in forming each of your opinions?

Once again, the adverse attorney wants you to provide him with every possible assumption you utilized or relied upon when forming your opinion in regards to claims handling. Claims handling should not be based upon assumption, but upon facts. Be careful when you hear trick words such as “assumption, theories, or any hearsay comments that are not investigated to confirm the reliability of same.” The best way to answer this question is:

“Counselor, I did not make any assumptions when analyzing the merits of this claim. I relied upon facts and documentation in support of the claim when I arrived at my decision.”

36. Please tell me everything you did to come up with your conclusions regarding this claim.

Once again, the adverse counsel is using a very broad term when he used the word “everything” in his question. The best way to answer this question is as follows:

“Counselor, this matter has been going on for almost two years. I may not be able to remember everything I did when arriving at my conclusions in this claim. I can remember that I ...”

At this point, utilizing bullet points if you can form them in your mind is an excellent way to answer a question that calls for several topics at one time. As an example:

“I can remember three things that I did when arriving at my conclusions. The first thing is the statements given by your client Mr. Brown. The second thing I remember is relying upon the witness statement given by Mr. Green. And the third thing I remember relying upon is the police report.”

By replying in a fashion that sets a limit to your recollections, not only do you leave yourself some area to expand upon your answer later, but you also will catch the attention of the jury who will then know there is some limit to what they must remember.

Oftentimes when questions are answered in bullet point fashion, the jury will actually write down your answers.

37. Is this engraved in stone?

“Counselor, if you mean that I would never change my opinion when you use the term ‘engraved in stone,’ then you would be incorrect in that assumption. If relevant information is submitted to me, I will consider it in regards to all information I have received and if the new information warrants a change in my position I will make those changes accordingly.”

38. If the factual assumptions you based your claims handling on were incorrect, would you change your mind?

“Yes. Do you have additional information you would like to submit to me?”

Once again you are admitting the obvious when confronted with a question such as this. At the same time you are turning the table on the attorney asking the questions, and narrowing his focus to what he believes may be incorrect in the information you used to analyze the claim. You will then be in a better position to answer further questions in this claim based upon any new information you receive.

39. Other adjusters might reach different conclusions, correct?

“Your question calls for speculation on my part as to what other people might do.”

A question of this nature is clearly intended to cause you to doubt your position and opinion. Do not fall into this trap. The question obviously calls for speculation on your part and you should not take this bait.

40. Are other adjusters who disagree with you usually wrong?

“Not always, however, if you are referring to this particular claim, if another adjuster were given the same facts and documentation I have received they would not come up with a different conclusion or opinion than I have.”

41. In all other similar claims you have handled, you have always drawn the same conclusions, correct?

“On those claims that have the same fact pattern and documentation as the one in question, I have always come to the same conclusion.”

42. What additional information would get you to change your opinion/conclusions?

Be very careful when a question such as this has been posed to you. First of all, the attorney asking the question is trying to gain information that he will then later research and use during the trial. The best way to answer this question is:

“This question calls for speculation on my part. My opinion and position was based on all of the documentation I have received and reviewed. Do you have additional documents or facts that you would like me to review, Counselor?”

43. Your conclusions would be subject to change if you are provided with additional information, correct?

“This calls for speculation on my part, Counselor. If you have additional information you would like me to consider, I would be happy to review this documentation.”

By answering this question with a simple yes, you open the door to the adverse counsel proposing many different hypothetical scenarios. Please be aware you will be presented with hypothetical scenarios during a discovery deposition which will require you to answer to the best of your abilities. Be extremely careful how you answer hypothetical questions. Listen to the hypothetical fact pattern very closely and if it is not consistent with the facts that you used when coming to the decisions in the claim in question, always point out to counsel asking the question, that the fact pattern he has presented does not resemble the claim in question, but given the question as posed, your answer will be ...

44. If you were to assume you had received false information upon which your conclusions were made, would that change your mind?

This is a typical hypothetical question that you will receive from time to time during either a discovery deposition or evidentiary deposition. The answer to this question is:

“It depends on what false information was presented to me. Will you give me a specific example of the false information you feel would be relevant to me, that would lead to a different conclusion?”

Once again, you are forcing the questioning attorney to narrow his assumptions to specific points which you can answer.

45. Are you certain about your conclusions?

When asked a good question, a good answer should be given. This is a simple straight-forward question and should be answered with “Yes.” Do not doubt your position when being posed questions such as this. Remain confident but not arrogant in your position.

46. Were there any other potential conclusions to be had?

Once again you are being asked a very broad question when you see or hear words such as “any other”. The best answer to this question is:

“This question calls for speculation on my part; nevertheless, based upon the information I reviewed and received there is no other conclusion in my opinion. Counselor, do you have any other information you would like me to review?”

47. In forming your conclusions on causation, how much weight did you give to the time sequence between events?

Be very careful when answering questions such as the one that is posed above. Opposing counsel is attempting to force you to commit to a certain set of probabilities. Many hypothetical questions can be posed as follow up to the above question. In addition, the word “weight” is ambiguous. Ask opposing counsel to define this word so as to narrow the scope of his question. Once he has defined the word “weight”, you should answer the question as truthfully as you possibly can.

48. You stated that your opinion and conclusions are supported by the “the literature.” What literature are you referring to?

Whenever referring to any literature, be prepared to cite the specific book (oftentimes the author) and the exact area in the reference material that you relied upon when coming to the position you have. It is always a good idea to have such reference material available so you can refer to it when providing answers. Once again be prepared to be cross examined on any reference material you have used.

49. What assumptions did you make in reviewing the records?

The best answer to this question is:

“Counselor, I did not make any assumptions when reviewing the records presented to me. My opinion is based on an objective review of the documents, and my conclusions were determined based upon that review.”

50. Are you sure that you have reviewed a complete set of records in this case?

Normally speaking you will rely upon your claims file and any documents that attach to it along with requests for admissions, interrogatories, and often times deposition transcripts as presented by your counsel. The best way to answer this question is:

“I have reviewed all of the documents within my claim file, and those provided by counsel representing the company I work for. Do you have any additional documents you would like me to review, Counselor?”

By answering the question in this fashion, you will cut off opposing counsel’s opportunity to pose rhetorical questions that are leading or intended to embarrass you. In addition you are requesting that counsel provide you any documents he feels may be relevant. Upon receipt of those documents, you can ask for a recess to review these documents from a global position in regards to the entire scope of the claim and litigation.

51. Did you have all the records in this case when you formed your opinion and reached your conclusion?

Much like the previous question opposing counsel is attempting to cast doubt upon your position in this claim. The best way to answer this claim is:

“Yes I had all of the records that were in my possession when I arrived at my position regarding this claim. Counselor, do you have additional documentation you would like me to review?”

52. Is this your personal or professional opinion you are expressing?

The answer is as follows:

“The matter before the court is related to my work as an adjuster; therefore, my position and opinion in this matter is related only to my profession.”

Do not allow counsel to bring in any personal opinions or biases you may have.

53. How many hours did you spend working on this claim?

“Counselor, I do not know the exact number of hours I have spent working on this claim. My activity notes will reflect the activities that I conducted during the investigation of this matter.”

If your claims handling system allows you to place the amount of time such as .1, .2, .3, etc. in the activity note, I strongly urge you to utilize this system in support of your thorough and comprehensive review of the matter. Opposing counsel may try to portray you as “shooting from the hip” or making a quick decision while giving very little time to thoughtful contemplation of the matter without some documentation of the time spent on the issue(s) in the claim.

54. How do you define [term of art]?

Be extremely careful when using legal terms when answering questions. One of the most utilized legal terms is the word negligence. If you use any legal term or industry term of art, be prepared to give a complete and thorough definition of the term.

As an example, if during testimony you maintained the position the adverse party was negligent and therefore at fault for the injuries received, rest assured, opposing counsel will ask you to define negligence. If you are unable to define negligence consistent with recognized sources and local jurisdictional definitions or applications, opposing counsel will portray you as having no idea of the standards upon which you relied when coming to the alleged erroneous conclusion. Needless to say this can be very embarrassing for you and will oftentimes destroy your credibility in the eyes of a jury.

55. Did you collaborate with anyone else in forming your opinion?

If you consulted with colleagues or management when forming your opinion and position in a particular claim, be prepared to name these individuals. Rest assured, opposing counsel will then take steps to depose those individuals to determine if their answers to questions posed of you are the same. You must answer this question truthfully; therefore, give forethought to this matter and check with any colleague or management prior to providing testimony to ensure your recollections of the conversations that were conducted.

56. Did anyone else help you form your opinion?

Like the above explanation, if you consulted with colleagues or management when forming your opinion and position in a particular claim, be prepared to name these individuals. Rest assured, opposing counsel will then take steps to depose those individuals to determine if their answers to questions posed of you are the same. You must answer this question truthfully; therefore, give forethought to this matter and check with any colleague or management prior to providing testimony to ensure your recollections of the conversations that were conducted.

57. Who have you spoken to about this case?

For the most part, as an adjuster you should respect the privacy of all parties related to any insurance case; therefore you should refrain from having casual conversations with friends or acquaintances about a particular case. As you can see it would be awkward to say the least to have a person such as a friend, husband, or wife subpoenaed to find out what you told that person concerning a case. In addition, any comments made by a friend might lead a jury to believe you have a personal bias or agenda that is outside professional boundaries regarding this claim.

Use extreme caution when answering this question, and limit your conversation about any claims related activity to only your professional colleagues.

58. Did you verify the facts provided to you by the independent appraiser you hired?

It is always in your best interest to thoroughly review the information provided to you by outside experts, and/or adjusters. You should look the work product over closely for any obvious errors you can discover. If you note any areas which require additional attention and/or questioning, please document your file accordingly.

The best way to answer this question is:

“I reviewed all of the information provided me by the independent appraiser. Furthermore, I provided a copy of the independent appraiser’s (estimate, scene diagram, report) to your client so they would have the same information upon which I relied. Do you have any information that would negate the facts provided me by the independent appraiser you would like me to review, Counselor?”

By answering this question in the preceding manner, you force opposing counsel to narrow his line of questioning to any area he feels may not have been adequately investigated so you will be in a better position to respond.

59. Did you verify the facts provided to you by the expert you hired?

This question is much like the previous question. As before, it is always in your best interest to thoroughly review the information provided to you by outside experts, and/or adjusters. You should look the work product over closely for any obvious errors you can discover. If you note any areas which require additional attention and/or questioning, please document your file accordingly.

The best way to answer this question is:

“I reviewed all of the information provided me by the independent appraiser. Furthermore, I provided a copy of the independent appraiser’s (estimate, scene diagram, report) to your client so they would have the same information upon which I relied. Do you have any information that would negate the facts provided me by the independent appraiser you would like me to review, Counselor?”

By answering this question in the preceding manner, you force opposing counsel to narrow his line of questioning to any area he feels may not have been adequately investigated so you will be in a better position to respond.

60. John Doe is a well known and respected Public Adjuster with over 20 years experienced and his opinions and conclusions are completely different from yours. What is your explanation for this discrepancy?

“Counselor, I am not here to testify about the position or conclusion obtained by Public Adjuster, John Doe. It would be speculation on my part to opine as to why he has come to a different conclusion than I have. I will answer any questions you pose in regards to the position I have arrived at regarding the handling of this claim.”

It is my opinion you should never enter into any sort of debate regarding the position taken by someone other than yourself. Keep in mind your position is based on your thorough and objective review of the documentation, and fact pattern that has been presented by you. You should remain steadfast and confident as to your opinion unless you are presented with documentation that clearly supports you were not given a complete set of facts or documentation when arriving at your position.

61. You have expressed your opinion. Would you defer to an adjuster with more experience and who is more qualified than you are?

“Not in this case/claim.”

62. Is Mr. Doe qualified to render an opinion on the conclusions in this case?

“Counselor, I am not here to speak to the qualifications of Mr. Doe. That is a question for the (judge/jury) to determine.”

Do not take the bait on questions such as this so that you are put in a position of making comments based upon a lack of knowledge about opposing adjuster. Simply defer any answer you may have to the trier of fact and allow that person or body to determine whether or not another adjuster or expert is qualified to render an opinion as to your handling of the claim.

63. Mr. Doe has an excellent reputation does he not?

The word “reputation” is an ambiguous term in this particular question. Mr. Doe might have a wonderful reputation as an amateur golfer, but on the other hand, he may not have a very good reputation as to as a claims adjuster, underwriter, etc. The best way to answer this question is:

“I am unaware of Mr. Doe’s reputation.”

64. Did Mr. Doe depart from the standards of the profession?

Be extremely careful when answering a question about the professional conduct of an adverse witness. If it is clear the adverse witness did not follow generally accepted insurance industry standards and practices, it is quite alright to cite those failures in a matter of fact way. Be prepared for several follow-up questions along this line as to what is generally accepted insurance industry standards and practices and be prepared to cite the sources for your opinion regarding Mr. Doe’s conduct. This is an extremely dangerous question if not handled properly.

65. Are you more qualified than Mr. Doe to determine the cause of this loss?

“Mr. Doe’s qualifications are up to the (judge/jury) to determine, not me, Counselor. It is my opinion, Mr. Doe will come to the same opinion I have if given the same set of facts that I have been given.”

66. Can you point to a single error that Mr. Doe made in this case?

Be prepared to answer this question in a truthful manner. If the insured, his representative, or anyone else, made a mistake in the presentation or handling of a claim you should be truthful and matter of fact when pointing out that error. Be prepared for follow-up questions as to how that error affected your handling of the claim, and what changes would be made if the error was corrected.

67. Do you have any criticism Mr. Doe's report, opinion, or conclusions?

Once again, you must be thoroughly familiar with all documentation within your file including any reports, opinions or conclusions arrived at by the insured, or presented by a representative of the insured. Any criticisms of this documentation should have already been brought to the attention of the adverse party and be well documented within your file, making your answers to this question easy and well founded. Once again, any criticism you have should be presented in a professional manner.

68. Just because the Mr. Doe disagrees with you does not make him wrong, agreed?

"Based upon all the documentation I have reviewed, if Mr. Doe disagrees with my position in this claim, he would be incorrect."

69. Do you believe Mr. Doe is being dishonest in offering a different opinion than yours?

"I am not here to judge the honesty or lack thereof in regards to Mr. Doe's position in this case. Any dishonest act is up to the jury to decide based upon the testimony provided."

70. What do you think of Mr. Doe?

"My thoughts about Mr. Doe would merely be speculation on my part, as I do not know him well enough to offer an opinion of Mr. Doe."

Once again, an extremely ambiguous term has been used, when one considers the word "think". Be extremely careful when questions such as this are posed asking for your opinion about an individual. Ask the attorney posing the question to define what he means by the word "think". This will narrow the scope of whether the opposing counsel is asking you for a personal opinion or a professional opinion. Always remain professional and business like when answering this question.

71. Should the jury be suspicious of witnesses who offer diametrically opposed viewpoints?

"I do not feel I am qualified to answer a question regarding the suspicions of a jury when confronted with opposing testimony. It is my opinion the jury should weigh all evidence put before them and come to conclusion based upon the weight of the evidence."

72. Can you tell me what the industry standards are in this case? (or maybe the Unfair Claims Practices Rules and Regulations)

As mentioned earlier in the proposed answers to the questions being posed to you, you must be thoroughly familiar with insurance industry standards and practices for handling a claim. Be aware that these standards incorporate Unfair Claims Practices Rules and Regulations in the particular venue in which the case is being litigated. If the answer to this question is "Yes", you should be prepared for follow-up questions specifically citing different rules, regulations, statute laws, and industry standards. As an example:

"Since you advise you are familiar with the industry standards, how many business days do you have as an insurance adjuster to pay a claim in which a satisfactory proof of loss has been received?"

Imagine how embarrassed you will look before a jury if you cannot immediately recite the number of days in which you have to make payment to an insured (or third party claimant). Failure to know these deadlines could will cause you to lose credibility and very likely the case that is being litigated.

If your answer to this question is "No", then you will also lose credibility in the eyes of the jury.

73. Which publications are most authoritative in this area?

"There are many publications which are available as a reference for the fact pattern in this particular claim. I do not necessarily find one to be more authoritative than another. Counselor, do you have a particular publication that you would like me to review?"

This question is dangerous because it asks you to cite a particular treatise, textbook, or resource that you consider being the most authoritative. This question is oftentimes posed during a discovery deposition. If you answer this question in such a way that opposing counsel can determine a specific treatise, book, or resource upon which you feel is the most authoritative, rest assured, opposing counsel will have thoroughly reviewed this publication and will find any weakness within your position based upon the publication you feel is the best. Opposing counsel will use such a publication to discredit your testimony and call into question your credibility.

74. What are the authoritative textbooks in this area?

Like the previous question, Counsel is attempting to determine what you used to govern your handling of a claim. Be careful when answering this question.

“There are many publications which are available as a reference for the fact pattern in this particular claim. I do not necessarily find one to be more authoritative than another. Counselor, do you have a particular publication that you would like me to review?”

This question is dangerous because it asks you to cite a particular treatise, textbook, or resource that you consider being the most authoritative. This question is oftentimes posed during a discovery deposition. If you answer this question in such a way that opposing counsel can determine a specific treatise, book, or resource upon which you feel is the most authoritative, rest assured, opposing counsel will have thoroughly reviewed this publication and will find any weakness within your position based upon the publication you feel is the best. Opposing counsel will use such a publication to discredit your testimony and call into question your credibility.

75. Do you consider the latest edition of the _____ to be authoritative?

Like the previous question, Counsel is attempting to determine what you used to govern your handling of a claim. Be careful when answering this question.

“There are many publications which are available as a reference for the fact pattern in this particular claim. I do not necessarily one to be more authoritative than another. Counselor, do you have a particular publication that you would like me to review?”

This question is dangerous because it asks you to cite a particular treatise, textbook, or resource that you consider to be the most authoritative. This question is oftentimes posed during a discovery deposition. If you answer this question in such a way that opposing counsel can determine a specific treatise, book, or resource upon which you feel is the most authoritative, rest assured, opposing counsel will have thoroughly reviewed this publication and will find any weakness within your position based upon the publication you feel is the best. Opposing counsel will use such a publication to discredit your testimony and call into question your credibility.

76. Do you consider any text or publication authoritative in the field of claims handling?

Like the previous question, Counsel is attempting to determine what you used to govern your handling of a claim. Be careful when answering this question. Once again Counsel is most likely on a “Fishing expedition”

“There are many publications which are available as a reference for the fact pattern in this particular claim. I do not necessarily believe one to be more authoritative than another. Counselor, do you have a particular publication that you would like me to review?”

This question is dangerous because it asks you to cite a particular treatise, textbook, or resource that you consider being the most authoritative. This question is oftentimes posed during a discovery deposition. If you answer this question in such a way that opposing counsel can determine a specific treatise, book, or resource upon which you feel is the most authoritative, rest assured, opposing counsel will have thoroughly reviewed this publication and will find any weakness within your position based upon the publication you feel is the best. Opposing counsel will use such a publication to discredit your testimony and call into question your credibility.

77. Do you agree with [statement from a text or article]?

When presented with a particular article, resource, treatise or other publication, demand to see the entire document upon which opposing counsel is relying. If it is a large article that will require time for you to review, do not be hesitant to seek a recess while you review the publication being offered. Remember, you have the right to in-depth review of any article or other publication that is being presented to you. It would be a fatal mistake on your part to allow counsel to take information out of context from any publication and ask you to agree to it. Beware leading questions such as this one.

78. There are well-qualified adjusters, experts, articles, and texts that support a different position from your conclusions, correct?

“I am unaware of any adjusters, experts, article, or texts that will support a position different from mine if the same fact pattern is taken into consideration. Counselor, do you have any documentation you would like me to review regarding this claim?”

Once again, you are forcing opposing counsel to narrow his area of questioning to specific issues. And again, if presented with documents, please take the time to review each document thoroughly before attempting to answer the question. If necessary ask for a recess. Oftentimes, when opposing counsel is confronted with your need to spend several hours or several days reviewing new information and applying it to the global material, counsel will move on and not pursue the line of questioning any further.

79. Where are the notes you made when you visited the loss location?

It is extremely important you retain all documentation within a claim file including hand-written notes. If your company documentation protocols are related to a paperless environment, be sure to scan all notes and other handwritten information into your claims system. If you follow this practice the answer to this question will be easy. If you do not follow this practice, opposing counsel can draw the attention of the jury to the possibility you are hiding information that would be beneficial to his point of view, or that you have “sanitized your claim file” to support your position when you knew or should have known the information upon which you relied is not correct.

80. You never visited the loss location, correct?

There are many answers to this question.

If you visited the loss location, the answer is easy. Be prepared for follow-up questions regarding your activity at the loss location.

If you did not visit the loss location because you delegated this activity to others, you must answer the question truthfully, and then be prepared for follow-up questions such as:

“What independent efforts did you make to verify the accuracy of the information supplied to you upon which you relied when coming to your decision?”

This question has been answered previously.

81. Did you personally do all the work that led you to make the conclusions you did in this case?

Once again, opposing counsel is attempting to determine if you relied on the work product of others in order to cast doubt in the mind of the jury that you may have relied on incorrect information. If you conducted all of the work that lead to the conclusions you made when handling this claim, then the answer is simple. On the other hand, if you relied on experts or other outside sources to assist you in gathering technical information or conducting an investigation, be prepared for many follow-up questions. It is important that you vet and retain the very best personnel you can when conducting a claims investigation so as to bolster your credibility and the merits of your decision.

82. Why did you delegate?

Once again there may be many answers to this particular question. Be truthful in your answer. If you lack the expertise in the particular area of an investigation such that you needed to call in experts, do not hesitate to state that fact. No one is expected to be an expert in everything, and a jury or judge will respect you more for being truthful in this area than they would if you come across as defensive about your expertise.

83. What is your understanding of the facts and events that brought this case to trial?

Once again, this question is asking for many answers when the term “facts and events” is being used. This is an excellent time to utilize a bullet point answer citing several facts or events that support your position in this matter. The best way to answer this question is:

“Counselor, I may not be able to remember all the facts or events that have brought this claim to its current point. Nevertheless, I do remember four specific issues that I feel are relevant. The first is ...”

By using a specific number you will not lose the interest of the jury when answering a question such as this. Furthermore, if you keep your bullet points short and to the point, it is more likely the jury will remember your position when deliberating the outcome of the case as opposed to long rambling answers that lead to boredom and a loss of attention by the jury.

84. Would new or different facts change your degree of certainty in this case?

“Counselor, your question asks for speculation on my part, I am uncertain if different facts would change my position in this matter. Do you have additional information you would like me to review?”

85. Is your opinion subjective?

“All opinions by their very nature are subjective, Counselor. In this particular claim I have based my opinion and position on the objective review of documentation that has been presented to me.”

86. You have stated your opinion and conclusions. Is it possible that you are just plain wrong?

“Anything is possible, Counselor; however, based upon the information I have reviewed I would consider it to be very unlikely that my position in regards to the handling of this matter is in error.”

87. What is your margin of error?

The next few questions will deal with possibilities versus probabilities. The question above is a “set-up” question. For the most part, claims handling should not be based upon a margin of error. When there is an ambiguity or uncertainty as to how a matter should be handled, always err on behalf of coverage, and provide the insured the maximum benefit of his policy. Nevertheless, opposing counsel will try to play the “numbers game” with you if you allow it to happen. The best way to answer this question is:

“I based my position on the information I have received, reviewed and analyzed accordingly. Absent the introduction of new information, I do not believe I have made any error in the analysis of this matter.”

88. Are you stating your opinion with absolute certainty?

“Based upon the information I have reviewed and the research I have done, I am certain the position I am taking based upon this information and research is accurate.”

89. What is your degree of confidence in the opinion you are expressing?

Once again, opposing counsel is attempting to entice you into playing the “numbers game”. Keep in mind that if you say you are eighty percent certain of your position, opposing counsel will simply twist this as follows:

“If you are only eighty percent certain of your position, then there is a twenty percent chance you are wrong and my client’s position is correct, isn’t it?”

Once again do not enter into the “numbers game” with counsel when dealing with these questions. One way to deflect these kinds of questions is to answer as follows”

“It is my opinion my position is more likely than not correct based upon the information that has been submitted. Counselor, do you have some additional information you would like to review?”

Be prepared for counsel to say the following:

“If it is more likely than not, that means you could only be 51% certain in your position. That would also mean you have a 49% chance of being incorrect? Isn’t that what you mean by your answer?”

Once again, do not enter into a “numbers game”. Simply remain steadfast in your position:

“Based upon the documentation and fact pattern I have reviewed and researched, my position in handling the claim is correct.”

90. As your testimony is based on a 51% degree of certainty, there is a 49% chance you are wrong?

Don’t let the adverse attorney put words in your mouth or paraphrase your testimony to benefit his position.

As mentioned in the answer to 89, this is the typical follow up question you will see if you enter into any form of “numbers game” with opposing counsel.

91. Did you use your common sense in formulating your opinion?

Common sense is an ambiguous term that could have various definitions based upon the particular region in America you may be asked to testify within. I suggest you ask counsel to define what he means by “common sense” and that will narrow the boundaries of your answer and very likely lead to few if any follow up questions.

Although common sense can have a great deal of influence on any decisions being made, always allow your analysis and ultimate resolution of the claim to be based only upon objective facts and the contract of insurance.

92. You do make mistakes don't you?

“When doing the laundry I placed a red shop towel in with other items. When the wash was completed, everything within the laundry had turned pink. Yes counselor I do make mistakes like everyone else does.”

When the opportunity presents itself interject some humor into your answers. The above example will ring true with almost any juror, and oftentimes questions such as this that are only meant to embarrass or impeach her credibility will not be viewed as favorable by a jury if you maintain your composure. Simply think of life's little mistakes and answer this question using one of your anecdotal experiences.

93. What is the most recent mistake you made?

The likelihood of this question being posed if being preceded by the previous question and answered in the format as suggested is highly unlikely. If on the other hand, this question is posted without the preceding question as a pre-amble, then I would suggest once again answering with a humorous, anecdotal response to this question if possible.

94. In the past when you made mistakes were you able to correct them?

“It depends on the mistake. There are times when mistakes can be easily corrected if the opportunity is provided. Counselor, do you have any specific area in which you believe I have made a mistake in the handling of this claim?”

The questioning attorney will either be non-responsive to your request for further information, or will often times take a more adversarial position by stating something as follows:

“Mr. (Witness), it is my job to ask the questions not you.”

Regardless of his response, you are forcing opposing counsel to find the areas which he thinks were handled improperly so you may be in a better position to respond to these problems.

95. If you discovered you made a mistake in this case, how would you go about correcting it?

“This question calls for speculation on my part, Counselor. I am unaware of any mistakes I have made in this particular claim; therefore, I would not have any idea how to correct a mistake I am unaware of. Are you aware of any mistakes I have made?”

96. Did you use the same intellectual rigor in this claim assignment as you do in your other work?

Of course the simple answer to this question is “Yes.” If you are handling your duties as a claims adjuster, Underwriter, etc. in an even-handed way you will adhere to the same procedures, protocols, and analysis each time; therefore, the answer to this question is easy. Be prepared for follow-up questions as to what you did in specific areas on this claim, and how it might differ from other claims.

97. Can you explain the difference between possible and probable?

“It is possible the sun would rise in the west tomorrow, but not very likely. It is probable the sun will rise in the east tomorrow; therefore it is more likely than not that event will occur. Counselor that is the best way I can explain the difference between possible and probable.”

Whenever possible, use analogies, short stories, and metaphors. This will make your testimony much more believable and also simple but direct analogies such as the sun rising in the east versus the west will drive home points that are easily remembered by jurors.

98. Isn't it possible that you are wrong?

As you can see, this question uses the word "possible". Once again the best answer to this kind of a question is:

"Counselor, anything is possible, however in this particular case, based upon the information I have reviewed and the investigation I have completed, it is more likely than not my position in this particular matter is correct."

If you can, answer the above question with a simple but sincere "No." without appearing to be arrogant or rude, oftentimes juries will accept your answer based upon the tone in which it was offered.

When answering a question such as this it is oftentimes a good strategy to simply ask opposing counsel if he knows of any particular areas where he feels you have made an incorrect analysis.

99. You do disagree with recognized experts in this field, don't you?

You should make opposing counsel name his recognized experts. If you are unaware of the expert's reputation or opinions, then you can simply answer that it calls for speculation on your part because you're not familiar with the expert's opinion.

If you recognize the expert, you should say so, and then ask opposing counsel to point to the expert's opinion so you can become familiar with this opinion. Ask for a recess if it will take a long period of time to review the expert's opinion in conjunction with all facts of the case.

Another way to respond to this question is:

"If other experts or adjusters have an opinion different from mine, it would be my opinion they have not reviewed all of the documentations nor conducted the same investigation I have. If that is the case, then I would certainly disagree with them."

100. Are you using the same standards and certainty testifying here today as you use in your business practices?

Once again a simple answer such as "Yes" when offered in a genuine and humble way is the best way to answer this question.

101. Have you ever lied?

"Before coming to testify I spent some time with my granddaughter. Jessica brought a picture she had colored of a giraffe and asked me if I thought she had done a good job coloring the giraffe. I told her I thought she had done a wonderful job when in fact she had colored well outside the lines, and I have never seen a purple giraffe. Purple is Jessica's favorite color. Yes Counselor, I have told a lie in the past."

By answering this question with a humorous but truly human incident in which one has told a lie will ring true with a jury. Be prepared to have a similar story in your mind if this question or similar questions are ever posed to you.

In addition to the proposed response as listed above, a further follow-up in answer to that question is:

"Regardless of my lie to my granddaughter Jessica, I have taken an oath to tell the truth in this particular case. Counselor, I take my oath of truthfulness very serious, and I am not lying in regards to this case."

102. Aren't some lies permissible in your own personal code of conduct?

Only your professional codes of conduct should be relevant. Simply state so. Be ready for the inevitable follow up questions.

The best answer for this question must be "No." There is no excuse for lying to anyone during the handling of a claim on matters related to the claim. If this has happened, be prepared for a very bad day at the courthouse.

On the other hand, there are other equally good answers.

Is telling a lie permissible in your professional code of conduct? Of course the answer to this will be "No." Then the follow up question to the previous answer will be to query you as to if your personal code is the same as your professional code.

If you are posed with this question, use an analogy such as the one listed in response to the previous question.

103. Have you made any credibility judgments as part of your analysis of this claim?

The use of the word “credibility judgment” is ambiguous to say the least. Adverse counsel is most likely attempting to move you into an area where you will call into question the integrity of other parties involved in the claim. Do not fall for this ploy. Instead ask counsel to define what he means by “credibility judgment” and if he does not do so in such a way that it links to the case in question, ask him to further link his analysis or definition of “credibility judgment” to the specific facts of the case. By doing it this way, you will be able to utilize the fact that you do not understand the question, and you are asking for further clarification from counsel so that you would be able to answer the question in a truthful manner.

104. Have you done everything necessary to come to a final conclusion in regards to this claim?

Once again, be wary of words that are very expansive and could include many different things such as the word “everything”. The best way to answer this question is along the following lines:

“Counselor, I have thoroughly reviewed all of the information and investigations that were done in this claim prior to reaching my final conclusion. I am unaware of anything that has not been reviewed by me. Do you have additional documentation or information you would like to submit to me for consideration?”

105. What did you do to prepare for your testimony here today?

Everyone should take time to review all the material involved in a particular case when testimony is anticipated and scheduled. It is quite alright to advise opposing counsel you have reviewed your entire claim file, along with any pleadings or other information that has been submitted to the courts in regards to motion practices such as discovery, answers to interrogatory, and production of documents. Rest assured all of the information that has been gathered up to the point of your testimony will be fair game for opposing counsel to ask you about; therefore it is in your best interest to thoroughly review and know all the information and facts about the claim. Once again remember that depositions and court testimony is not a test of your memory, or intended to be a some contest to see how much material you can memorize. You should ask for the opportunity to review your file if specific dates or timelines are asked for so you can answer the question accurately

106. Did you review with counsel the answers to interrogatories and disclosures pertaining to your proposed testimony here today?

This question is intended to intimidate you and cause doubt.

Everyone reviews their testimony with the representing counsel. Be aware that there is a great deal of privilege in regards to your conversation with counsel retained to represent you or your principal. It is very likely your counsel will interject and object to the form of the question, as it seeks to gather information that is privileged. Nevertheless, if you have reviewed interrogatories and other disclosures that are records within the court, you will be expected to answer those questions related to same.

107. Did you go over with counsel the questions he was going to ask you and the answers you were going to give?

“Counsel representing Underwriters and I have gone over the facts of the case and the general areas in which I will testify. Counsel and I did not rehearse questions because the answers I am giving today required no rehearsal on my part.”

108. How many times did you meet with counsel before you came into court today to testify?

You should know the number of times you have met with your counsel prior to coming to court to testify. Opposing counsel is attempting to give the impression to the jury that your testimony is well rehearsed and based upon answers that will only benefit your position regardless of whether they are truthful. The best way to answer this question is:

“I am not sure of how many times I have met or discussed this matter with counsel representing Underwriters. I have visited with counsel one time prior to testifying today, at which point we went over the latest discovery and progress of this case.”

Jurors will expect you to have discussed the matter with your attorney, and therefore if you answer this question in a thoughtful and truthful manner, the jury will not take your answer as being anything other than what they would do if faced with the same situation you are.

109. Did you discuss with counsel what you would testify to today?

“Counsel and I discussed the general areas in which I would be testifying. The nature of our conversation was to simply tell the truth when asked questions to the best of my ability.”

110. Did you rehearse your testimony here today with counsel?

It is my recommendation you do not rehearse testimony with your appointed counsel. Rehearsed testimony will come across to the jury as exactly that. Unless you are an accomplished and artful actor, any testimony you give that does not come from your genuine experience of handling the claim, will appear to be transparent and self-serving. It is quite alright to go over the areas where you will be asked questions of, and to go over general answers in a broad way. If as a witness you will adhere to this policy, you can answer this question in a very sincere and truthful manner in that you did not rehearse questions.

111. Why did you spend so much time preparing with counsel if you were just going to tell the truth?

Based upon the suggestions made to the previous questions, be prepared for a question such as the above. Oftentimes the best way to answer this question is:

“I wanted to make sure that I understood this matter completely so I could give truthful and honest answers. Furthermore, discovery has been ongoing and along with motions such as motions in limine, which I would need to be aware of when offering testimony in order to avoid a mistake or be unaware of new evidence.”

112. What are the weakest parts of your case?

“Counselor, your question calls for speculation on my part. It is my opinion the judge/jury will evaluate this particular claim, and determine if there are any areas of weaknesses in the handling of this matter.”

Do not give opposing counsel your thoughts of any areas where you would be vulnerable. It is up to opposing counsel to determine if there are any weaknesses in your handling of the claim rather than you providing him with areas to attack you.

113. Would you like your side to win this case?

“Counselor, it is my opinion that no one wins in matters such as this when disputes are being put before the court. I do believe my position and handling of this matter was correct, and if the jury agrees, then their decision will be reflected accordingly.”

114. How much are you being paid for your testimony here today?

“Counselor, my testimony is not for sale. I am being compensated by Underwriters for the time I spend testifying in this matter, much the same as you are for the work you complete as an officer of the court. Just probably not as much.”

