

**PROPERTY
CLAIMS
ASSOCIATION**

◆ *of the Pacific* ◆

San Francisco, California

April 2009

Volume 2 • Number 2

Association News Network Associate Affiliate



Relocating and topics

April Message from 2009
PCAP President Robert Fox



Bob Fox

Our last luncheons have been held at the conference room in Emeryville provided by Hagen, Streiff, Newton & Oshiro. It has helped make our programs for our East Bay members a little more accessible. Now we are trying to give the peninsula members the same opportunity by moving the luncheons to Wells Fargo Insurance Services office in San Francisco. The conference room there was arranged by member Helen Greenstrand. We will be using their facilities for the next two programs. Wells Fargo offices are at 45 Fremont Street, 8th floor, in San Francisco. The Bart connection is to the Embarcadero station a convenient block away from the meeting location.

Our thanks also to Michael Sowerwine
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Finding the Silver Lining: Claim Professionals Cope with the Financial Crisis

By Simon Oddy, ACA, CFE
RGL Forensics

In a recent meeting concerning a loss insured by a major U.S. carrier, an insurance adjuster told me that a mechanics lien had been placed on the Insured by one of the vendors involved in the post-loss restoration work – something he said he had never seen in more than 30 years of claims handling. He attributed the vendor's startling action to the current state of the economy.

Even if we might not fully comprehend the complexities and causes of the current financial crisis, we understand the enormity of the crisis and its impact on confidence in the economy. Credit and liquidity issues are placing additional pressures on business owners, pressures compounded by the worsening economy, downgraded sales forecasts, increasing costs of raw materials and energy prices -- and consequently reduced margins. If we add to this a catastrophic event that interrupts business, the problems faced by a business are seriously multiplied.

Claims handlers have always been sympathetic to the pressure placed on the business by such events. However, the pressure faced by the business owner is inevitably passed to the claims professional as the Insured reacts to restore the business, while seeking assistance from its insurance carrier.

What's Different Now

In the period leading up to the current financial crisis, cash flow had been good in many businesses. Receiving money from insurance claims was not irrelevant, but less imperative than now. Today's a different story. Cash is once again "King" and claims professionals are feeling the squeeze from both the Insured and its representatives (brokers and claims consultants).

Also, in the prior, less volatile economic climate, when analyzing a business income claim it was fairly routine to review the pre-loss sales history of a business for two years before the loss occurred. This is done to develop a sales trend factor that would then be relied upon to project sales during the period of restoration. Today, the past may not necessarily be a predictor of the future. Depending on the type of business involved, past results may not accurately indicate what the future would have been had the insured event not occurred. While it is still necessary to review past performance as part of the process to project future sales, it becomes more important to analyze the economic climate of the Insured's business in order to properly project sales during the period of restoration.

Anticipated Pressure Points

Increased Demand for Advance Payments: In the typical life of a large insurance claim, two or three advance payments on account might be requested and processed prior to a final settlement of the loss. Today, with increased pressure on a business's cash flow caused by market conditions, the frequency and demand for such advance payments is likely to increase.

In turn, this means increased pressure and a more frequent need for the Insurer to respond to

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President's Message

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and Tim Gillihan of Hagen Streiff Newton Oshiro for providing a meeting room for us. With their help we will be back at the Emeryville office later this year.

PCAP is a successful provider of California Department of Insurance approved continuing education programs for IA's. This is an important step in PCAP's goal of providing informative and credit worthy programs at our luncheons for those attending. It is one more continuing Ed credit source PCAP offers. I hope you will take advantage of it and attend our meetings.

Topics coming up are worthy of comment and I hope your interest will bring you to these two. The first in May will be presented by Stephen Smith, attorney with Smith Smith & Feeley. It will be "The Mortgage Crises and the Impact on Property Claims." A very timely one considering today's failed real estate market and valuations. Here is where the mortgage clause really comes into play, who to pay and who does have the insurable interest.

The second topic will acquaint you with "Green coverage" and what LEED is all about and how our industry will become more active in this new construction and insurance field. You will benefit knowing about the code, statute and legal aspects of building repair that require environmental upgrades and the insurance to pay for them. Gil Malmgen will lead the group presentation.

Remember we are still looking for newsletter articles you can share with the association. If you have one, send it to me at rseefox@sbcglobal.net.

Hope to see you at the May meeting.

Bob Fox

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Finding the Silver Lining continued from page 1

internal reporting requirements that allow a payment to be processed. For claims professionals, this translates to increased demand for efficient analysis and reporting so that an advance payment can be processed. In many cases, the Insured overlooks this aspect of the claims process and simply expects payments as requested.

Reduced Timeframe between Advance Payment Recommendations and Receiving Payments: More than ever, Insureds are going to expect payments overnight. They will anticipate payments the moment they believe that they have provided everything needed to support the claim. It may have taken three months to piece the claim together, but the Insured will want a check cut the day the claim is delivered. For the Insured, the clock has been ticking since the date of the loss. The fact that a formalized and documented claim is just now being received is not relevant. This results in pressure placed on the Insurer to make an advance payment – immediately. Brokers and consultants will also be chasing updates and advance payments.

Increased Trend Toward Settlement Negotiations: It is likely that an increasing acceptance of negotiated claims will outweigh the desire to fully analyze a claim for a long period. For many Insureds, the security of cash now will be worth more than cash later. Insureds will seek cash flow, as well as the opportunity to end the insurance claim processes and return resources to focusing on operations.

The upside of this situation is that the Insurer will be placed in an improved bargaining position to develop a good settlement. While this may be a beneficial short cut to a closed file, increased pressure may exist for an abbreviated review process to enable settlement discussions. Care should be taken if this route is chosen.

More Difficult Settlement Negotiations

It is also likely that settlement negotiations will become more difficult. The impact of the economy and the increased pressure on the Insured's business is likely to make him or her seek every possible dollar in a negotiated settlement. Fewer concessions should be expected.

Risk of Inflated Claims

With pressure on management to produce results in line with prior years', or budgets set last year, (i.e. before the financial crisis), losses caused by insured events may create an opportunity to blame the performance of the organization completely on the insured event. Claims professionals need to consider cause and effect even more carefully in any claims review. Increased pressure to identify the actual impact of the event on the business will be more important than ever. Inflated claims could result if the impact of the insured event is misunderstood and all poor performance is blamed on the event.

Responsiveness to Requests for Information

Insureds may not be willing to provide all of the requested information, and instead may want to compromise certain claim components without thorough review in order to short-cut the time frame. It will be necessary to evaluate their position and determine how important the information is to the overall picture.

Going Concerns

If companies ultimately fail because of the financial crisis – who will be blamed? Claims professionals need to take care in responding quickly to claims to avoid becoming the obvious target at which the Insured may point the finger. In such cases, there must be a full review of the financial health of the Insured, before, during and after the loss, in order to understand the root cause for the business ceasing as a going concern.

Additionally, a company may not be in a position to survive for the full length of the period of restoration – irrespective of the loss – due to the economic climate. Thus, paying for a loss calculated on the basis that there is no going concern issue may lead to an overpayment of a claim.

Liens on Insureds

As the credit crunch grips many claims response operations, such as salvage companies, restoration companies, engineering consultants, etc., it's likely that these entities will become more aggressive in respect to the payments for their services. Failure to make such payments can lead to liens on assets.

The result is that when a settlement payment or payment on account is made— rather than being used to advance restoration and get the company back in business — it will be drained by payments due to creditors.

What is Expected in the Future? Claims for Business Failures

As previously discussed, it's expected that a number of businesses will unfortunately fail over the next 12 months because of the economic downturn. For those who also experience an insured event, it's feasible that this event will be blamed for the failure. As a result, it is highly likely that the Insured will point the finger at the claims industry for not handling the claim appropriately and causing the business failure. Cause and effect is key. The claims professional must be able to separate the impact of the loss from the underlying financial crisis.

Delays in Litigation

Litigation of any dispute, be it an insured event or other litigation action, requires cash flow. Any litigated matter is tantamount to an investment decision: it requires an injection of cash (legal costs and costs for experts) in the anticipation of a return on that investment (in the form of a damages award).

As with any investment, the timing needs to be appropriate. The current economic crisis is likely to lead to more litigation for some of the reasons cited above, but it is also possible that litigation will be delayed until the required cash is available for funding the case. The upside for the claims professional is that the delay will allow time to put a team in place to respond to the litigation.

PCAP Treasurer's Report

March 2009

The financial results through February 2008:

Beginning Balance 1/1/09		\$4,931
Revenue:		
Member Dues & Events		\$2,340
Expenses:		
Member Events	92	
Insurance	187	
Other	124	
Total Expenses	\$403	
Net Income		\$1,937
Ending Balance 2/28/09		<u>\$6,868</u>

The financial results for the two-months ended February 28, 2009 are shown above. We continue to return much of the member's annual dues back to the membership in quality programs with free lunch, our newsletters, and continuing education credits, which is our goal. We have had a very good response to our 2009 memberships. I encourage everyone to join and get the benefits of great free programs including lunch and continuing education credits for MCLE, RPA, CPCU, and the new California Department of Insurance requirements.

Practical Steps

The following measures may be helpful to claims professionals dealing with the additional pressures brought on by the current economic climate.

- Partner with experts whose reports are concise yet clear and who can provide you with a thorough understanding of the issues. This will allow you to get through the information and handle the claim payment process diligently but quickly.
- Research current market trends to assist in the projection of sales during the period of restoration if you are involved in a business income claim.
- Communicate with your experts. Let them know what you are dealing with – increased demands for advance payments, troublesome Insureds, etc. Make certain that they are aware of deadlines and response times.
- Educate the Insured about the claims review process. Discuss the payment process and timing related to reports from experts, review of reports, recommendations for payments, payment processing. Let the Insured know what to expect.
- Make use of technology. Shared database products exist that allow you as the claims handler to get immediate updates on the status of a review performed by an external consultant by simply logging into a secure shared system.
- Be prepared for settlement negotiations. Arm yourself with alternate calculations and strong support for any assumptions. Take advantage of the potential for an early settlement.

The Silver Lining

So where are the opportunities in all of this?

The financial and economic crisis offers claims handlers the opportunity to recognize the increased pressure on Insureds, and to demonstrate their responsiveness and support to both the carrier and its customers. This enhanced response and support during difficult times will remind the Insured why they chose a particular carrier, and will remind the carrier why they in turn chose you as the claims professional. It also enhances the carrier's ability to stand out from the crowd, while doing the right thing for its customer.

The far-reaching impact of the depressed economy is yet to unfold. By dealing with the Insured's increased tension in the insurance claims process, it is an opportunity to reassure the insurance market that it is still business as usual amid the current doom and gloom surrounding the economy.

The Property Claims Association of the Pacific edition of the Association News Network is a production of Association News Network, Inc., published as a service to the Property Claims Association of the Pacific, dedicated to the promotion and betterment of this professional organization. The views and comments expressed within the articles herein do not necessarily reflect the views of ANN, Inc. or PCAP. We assume no responsibility for any opinions and/or statements offered by contributing authors to the publication. No advertising material shall be accepted for this edition. We reserve the right to reject any article material. We encourage your support of this professional organization by joining and attending regular functions. We also encourage you to visit web site: www.PropertyClaimsAssociation.org.

Please submit articles for consideration by email, to
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Published by Association News Network, Inc.

Bryan Harrison, Publisher: Bryan@AssociationNewsNetwork.com
(925) 292-1069 • www.AssociationNewsNetwork.com

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San Francisco, California

Property Claims Association of the Pacific

www.PropertyClaimsAssociation.org

2009 Membership Application

Please print this page, fill it out and mail it with your check to the address indicated below.

Name _____

Company _____

Current Position _____

Business Address _____

Phone _____

E-Mail _____

Fax _____

Membership dues are based on the calendar year.
Please return application with check for \$45.00 payable to

**Property Claims Association and send to:
Michael Diliberto III, CPA
RGL Forensic Accountants and Consultants
100 Bush Street, 20th Floor
San Francisco, CA 94104**

PCAP MISSION STATEMENT

The purpose of The Property Claims Association of the Pacific is to advance the members' knowledge of:

- legal issues associated with insurance claim adjustments;
- the Statutory and Department of Insurance Regulations governing fair claims handling;
- technical advancements in construction/restoration;
- applicable code changes effecting real and personal property loss;
- consumer insurance related concerns by providing continuing education programs that foster a professional approach to claims handling in the Property and Casualty Industry.

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