



NSPII News

Winter 2016

www.nspii.com

INSIDE...

The President's Message from Jeffrey W. Ferrand



It is with great pleasure and enthusiasm that I extend an early welcome to all NSPII members to the next chapter of NSPII's decorated history. I am excited at the opportunity to serve as your next President of NSPII, and I will do my best

to discharge the duties of the office to the best of my abilities. My vision, in a nutshell, is for NSPII to continue to be the premiere organization that helps promote, educate, and foster a collaboration of all types of fraud fighters, spanning from private insurers to governmental agencies to various types of service providers. As we turn our attention to 2016, we must also recognize the successful efforts of past president, Michael Jacobs, his Board and officers, and the seminar committee on an outstanding year. Last year's Advanced Insurance Fraud Seminar, featuring the mock trial, was a huge success, which we will strive to build on in 2016.

In 2015, on behalf of the National Board of Directors, Michael Jacobs announced the adoption of a 7 point plan intended to help NSPII retain existing members and attract new members, highlighted by:

1. Continuing participation in the Coalition Against Insurance Fraud and continuing to send representatives to the Coalition's meetings which occur in June and December.
2. Expanding its efforts to market to commercial carriers and life and health carriers.
3. Attracting new NSPII members from Coalition Against Insurance Fraud member compa-

nies by offering free registration to 2016 AIFS to national SIU directors.

4. Affordable Advanced Insurance Fraud Seminar pricing featuring insurer group discounts.
5. Continuing efforts to help struggling chapters revitalize themselves by putting together a corps of volunteer speakers for chapters to call upon should they need one.
6. Reversing the loss of insurance company members by setting goals to have net new SIU investigators, net new SIU managers, net new adjusters and net new claims managers.
7. Adopting training and education policies, including those related to vetting seminar topics and how information will be presented at seminars to maintain the focus on education and reducing efforts by some past speakers to use speaking engagements as little more than marketing efforts.

As I promised to the Board last year, I am committed to bring continuity to the National Board's vision by taking this 7 point plan to the next level this year and by working closely with First Vice President Clayton Oswald to ensure that our decisions have a long-lasting effect.

In addition to furthering our membership efforts, I am concentrating my leadership efforts in two additional directions. First, I hope to make 2016 a pivotal year in developing relationships and partnerships with other premiere anti-fraud organizations. This will effectively expand our reach to new members and provide additional resources for current members. Exciting discussions have already commenced with two other leading organizations. Second, I have deployed representatives of our Board of Directors to investigate and cultivate a couple of ripe areas for the forming of new chapters. It is my goal to have cultivated at least one new chapter by the end of 2016 for potential expansion.

(Continued on page 2)

News From Our Chapters:

Florida	10
Illinois	10
Indiana	11
Kentucky/ Tennessee	13
Missouri	14
Ohio	14

No article in this Newsletter can be reprinted without permission of NSPII®. E-mail requests to: nspii@nspii.com.

**2016 NSPII® Executive Board Roster****President and Indiana Chapter Delegate**Jeffrey W. Ferrand
Fuzion**First Vice President**Clayton O. Oswald
Taylor, Keller & Oswald, PLLC**Second Vice President**Todd M. Burris
State Auto Insurance Co.**Secretary**Michael Beagle
Discovery Pro, Inc.**Board Members**Eric W. Moch
HeplerBroom, LLCJeffrey Rapattoni
Marshall DenneheyHans M. Pfaffenberger
Quintairos, Prieto, Wood & Boyer, P.A.**Past President & Ohio Chapter Delegate**Michael Jacobs
McGowan & Jacobs, LLC**Treasurer**Jonathan Libbert
JD Forensics, Inc.**Alabama Chapter Delegate**John P. Neil
Unified Investigations & Sciences, Inc.**Arizona Chapter Delegate**Lin Werkheiser
Southwest Risk Advisors, Inc.**Florida Chapter Delegate**T. David Harlow
TDH Investigation, Inc.**Georgia Chapter Delegate**Robert A. Lusk
Goodman McGuffey Lindsey & Johnson, LLP**Illinois Chapter Delegate**Scott Gillman
Condon & Cook, LLC**Kentucky Chapter Delegate**John M. Bush
Quintairos, Prieto, Wood & Boyer, P.A.**Michigan Chapter Delegate**Glen H. Pickover
Gregory and Meyer, P.C.**Missouri Chapter Delegate**Jesse J. Sproat
Unified Investigations & Sciences, Inc.**Tennessee Chapter Delegate**Scott Brown
Frost Brown Todd, LLC**Executive Secretary/Newsletter Editor**Mary Beth Robinson
NSPII
P.O. Box 88
Delaware, OH 43015-0088
Tel: (888) 677-4498
Fax: (740) 369-7155
E-Mail: nspii@nspii.com*(Continued from page 1)*

sion in 2017. Finally, we are also proud of many member benefit enhancements over the last couple of years, which have brought members a slick website, active webinars, a LinkedIn page, a weekly newsletter, etc. In 2016, we expect additional progress toward a presidential blog, an NSPII twitter account, enhanced online payment options, an NSPII sponsored journal, and many more.

The 2016 Advanced Insurance Fraud Seminar is scheduled for November 14-15, 2016 and will be held at the Hilton Chicago/Indian Lakes Resort in Bloomingdale, Illinois. The Seminar Committee this year is being chaired by Jeffrey Rapattoni with Marshall Dennehey Warner Coleman & Goggin, P.C. and Eric Moch with HeplerBroom, LLC, and they are already hard at work retaining a great group of speakers to present advanced-level topics. I expect this year's seminar to be one of the best yet, and the Chicago-land area is such a thriving venue with many things to see and do.

These are exciting times. I sincerely hope that you all either stay involved or get more involved in NSPII at the local and national levels as well as inspire others to join this awesome community. Throughout this year, if I can be of any service or if you just want to chat about NSPII, please free to email me at jferrand@fuzionanalytics.com or call me directly at 317-566-7973.

NSPII Welcomes the Following New Members:

Tim Bates: Mr. Bates is a SIU Investigator with Country Financial. He has been with them for 15 years. He is a member of IASIU, IAAI, NICB, and National Farm Bureau CAAG. Mr. Bates resides in Lake Geneva, Wisconsin.

LaGreta L. Burch: Ms. Burch is a Claim Representative with Westfield Insurance Co. She has been with Westfield since 2006. Prior to Westfield, she worked for Safe Auto for 4 years and Nationwide Insurance for 7 years. Ms. Burch received her Bachelor's Degree from the University of Phoenix. Ms. Burch resides in Grove City, Ohio.

Adam E. Carr: Mr. Carr is the Managing Partner of The Carr Law Office, LLC. It has been in operation since 2005. He received his B.A. Degree from Rice University and his J.D. Degree from Cleveland Marshall College of Law. He is a member of the DRI, Ohio Association of Civil Trial Attorneys, Cleveland Association of Civil Trial Attorneys, and the Ohio State, Akron, and Lake County bar associations. Mr. Carr resides in Cuyahoga Falls, Ohio.

Mark Catron: Mr. Catron is Fire Investigator with Fire and Explosion Consultants, LLC. Prior to Fire and Explosion he was the Battalion Chief/Fire Investigator with the Somerset Fire Department for 20 years. He is a member of IAAI, NAFI, Pro Board Certification. Mr. Catron resides in Science Hill, Kentucky.

Stephanie Glickauf: Ms. Glickauf is an Attorney with Goodman McGuffey Lindsey & Johnson, LLP. She received her Bachelor's Degree from Georgetown University and her J.D. Degree from the University of Georgia School of Law. She is a member of the ABA, CLM, and IASIU. Mr. Glickauf resides in Atlanta, Georgia.

Kevin Holstein: Mr. Holstein is an SIU Investigator with Cincinnati Insurance Co. Prior to Cincinnati Insurance, he worked for the City of Hamilton as a Police Of-

(Continued on page 3)



NSPII Welcomes the Following New Members (cont'd.)

(Continued from page 2)

ficer/Detective for 14 years. Mr. Holstein received his Bachelor's Degree from the University of Cincinnati. He is a member of IASIU and ACFE. Mr. Holstein resides in Hamilton, Ohio.

Amber Horine: Ms. Horine is a SIU Investigator with State Farm Insurance Co. She has been with State Farm around 18 years. Ms. Horine resides in Muncie, Indiana.

Rachel Hudgins: Ms. Hudgins is an Attorney with Goodman McGuffey Lindsey & Johnson, LLP. She received her Bachelor's Degree from Emory University and her J.D. Degree from the University of Georgia School of Law. She is a member of GDLA. Ms. Hudgins resides in Atlanta, Georgia.

Lawrence Humberstone, D.C.: Dr. Humberstone received his degree in 1985 from the National College of Chiropractic in Lombard, Illinois. Upon graduation, he established successful practices in the western suburbs outside Chicago, Illinois for the past 29 years.

He has been an independent contractor for Coventry Health Care and has collaborated with a diverse group of clinicians and administrative personnel within that facility. He has consulted for Coventry Healthcare and has been a member of the credentialing committees.

Dr. Humberstone is a member of the American College of Chiropractic Consultants, a group involved with quality assurance. He served as Vice President of the American College of Chiropractic Consultants from 2006 to 2007, President of the American College of Chiropractic Consultants during 2008 and 2009 and served on the Board for Directors during 2010 and 2011.

Dr. Humberstone also worked with the Chiropractic Council on Guidelines and Practice Parameters, another diverse group of chiropractors from across the country. He collaborated on the meta-analysis, which made recommendations regarding chiropractic frequency and duration issues. Dr. Humberstone regularly speaks on topics related to Peer Review and Independent Medical Exams and is experienced with the use of national published peer review evidence based guidelines such as the Official Disability Guidelines and the American College of Occupational and Environmental Medicine Guides.

Dr. Humberstone resides in Warrenville, Illinois.

Gary A. Joiner: Mr. Joiner is a SIU Manager with State Auto Insurance Co. Prior to State Auto, he worked for Nationwide Insurance for 14 years. He is a member of IASIU and CLM. Mr. Joiner resides in Commercial Point, Ohio.

Mark McCullough: Mr. McCullough is a Fire Investigator with Rudick Forensic Engineering. He has been with Rudick for 22 years. He is a member of ASME, NAFI, IAAI, and NFPA. Mr. McCullough resides in Youngstown, Ohio.

Neal McLoughlin: Mr. McLoughlin is a Sergeant with the City of Chicago Police Department. He has been with them for 18 years. Mr. McLoughlin received his Bachelor's Degree from Calumet College St. Joseph and his Master's Degree from St. Xavier University. He is a member of ACFE. Mr. McLoughlin resides in Chicago, Illinois.

Anne McMillan: Ms. McMillan is a SIU Manager with Celina Insurance Group. She has been with Celina for 20 years. Ms. McMillan received her Bachelor's Degree from Indiana State University. She is a member of CPCU. Ms. McMillan resides in Brownsburg, Indiana.

Wayne Morton: Mr. Morton is a SIU Investigator with Progressive Insurance. He has been with Progressive for 12 years. Mr. Morton received his Bachelor's Degree from the College of Charleston. He is a member of IASIU. Mr. Morton resides in Winchester, Kentucky.

Phyllis Novello: Ms. Novello is a SIU Investigator with State Farm Insurance Co. She has been with State Farm for 27 years. She received an Associate's Degree from Wilbur Wright College. She is a resident of Berwyn, Illinois.

(Continued on page 4)



NSPII Welcomes the Following New Members *(cont'd.)*

(Continued from page 3)

Melissa Rajewski: Ms. Rajewski is a SIU Investigator with Liberty Mutual Insurance. Prior to Liberty Mutual, she was a police officer with the Grand Rapids Police Department for 8 years. Ms. Rajewski received her Bachelor's Degree from Eastern Michigan University. She is a member of IASIU and CIFI. Ms. Rajewski resides in Akron, Ohio.

Eric Rice: Mr. Rice is an Attorney with Quintairos, Prieto, Wood & Boyer, P.A. Prior to Quintairos, Prieto, he worked for Smith, Rolfes & Skavdahl Co., L.P.A. for 3 years. Mr. Rice received his Bachelor's Degree from Eastern Kentucky University and his J.D. Degree from Barry University School of Law. He is a member of the Kentucky Bar Association, IASIU, and the Florida Bar Association. Mr. Rice resides in Louisville, Kentucky.

Josh Rice: Mr. Rice is a SIU Investigator with Country Financial. Mr. Rice resides in Arden Hills, Minnesota.

Clayton T. Roloff: Mr. Roloff is a Liability Field Investigator with G4S Compliance and Investigation. He conducts scene inspections of multi-line commercial/homeowners liability, property damage, auto/big rig accident claims, negligent entrustment, product liability, and other claims. Mr. Roloff also works for the Federal Emergency Management Agency. He is deployed to a disaster location national processing service center to intake disaster victims' verbal applications for FEMA Individual and Household program benefits, and input information for administration of federal damage awards. Mr. Roloff received a Bachelor of Science Degree from the University of Missouri. Mr. Roloff resides in Pacific, Missouri.

Stephen A. Schlemback: Mr. Schlemback is a SIU Investigator with State Auto Insurance Co. He has been with State Auto for six years. Prior to State Auto, he was with Nationwide for four years. Mr. Schlemback received his Bachelor's Degree from Rowan University and his Master's Degree from St. Joseph's University. He is a member of IASIU. Mr. Schlemback resides in Cumberland, Pennsylvania.

Tim Schreadley: Mr. Schreadley is a Fire Investigator with Fire and Explosion Consultants. Prior to Fire and Explosion Consultants, he was an Investigator with the Ohio State Fire Marshal's Office for seven years and a firefighter with the City of Huber Hts. Fire Division for 21 years. He is a member of IAAI, NAFI, IAFF, and the National Sheriff's Association. Mr. Schreadley resides in Troy, Ohio.

Mara Sellner: Ms. Sellner is a SIU Investigator with Grange Insurance. Prior to Grange, she worked for Mendota Insurance and Progressive Insurance. She is a member of IASIU. Ms. Sellner resides in Owatonna, Minnesota.

Pictures from 2015 Advanced Insurance Fraud Seminar





Pictures from 2015 Advanced Insurance Fraud Seminar (cont'd.)





2015 National Award Recipients



Detective Bryan McGuinness with the Department of Financial Services, Division of Insurance Fraud received the **2015 F. Lee Bringer Award** at the 2015 Advanced Insurance Fraud Seminar at The Brown Hotel in Louisville, KY. This is the Investigator of the Year Award.



Special Agent Paul K. Zukas with the FBI-Chicago received the **2015 Public Service Award**. The Public Service Award is to be given to a member of the public sector for “professionalism, dedication, and accomplishment in the fight against fraudulent insurance claims and/or arson.” NSPII Member Martin Callahan accepted the award on his behalf as he was out of the country for work.



2015 National Award Recipients (cont'd.)



Tamara J. Brown with United Healthcare received the **2015 Outstanding Achievement Award**. The Outstanding Achievement Award is to be given to a Society member for “outstanding achievement in the fight against fraudulent insurance claims.”



Joel W. Abbey with Liberty Mutual Insurance received the **2015 President’s Award**. The President’s Award is to be given to a Society member for “outstanding and exceptional service to the Society.” Awarded at the discretion of the outgoing NSPII President.



2015 National Award Recipients (cont'd.)



Michael E. Jacobs with McGowan & Jacobs, LLC was presented with the Past President Plaque.

2015 Dennis Nebergall Award Recipient



Tamara J. Brown with United Healthcare received the **2015 Dennis Nebergall Award** at the 2015 Advanced Insurance Fraud Seminar at The Brown Hotel in Louisville, KY. The NSPII-Indiana Chapter's Dennis Nebergall Award is awarded each year to a member of the insurance community for outstanding service in the fight against insurance fraud.



2016 Advanced Insurance Fraud Seminar

MARK YOUR CALENDARS!

The 2016 Advanced Insurance Fraud Seminar will be held on November 14-15, 2016 at the Hilton Chicago Indian Lakes Resort, 250 W. Schick Road, Bloomingdale, IL.

PRICING FOR 2016 will be the same as 2015 as follows:

- \$195/day insurer member
- \$245/day non-insurer member; non-member insurer
- \$285/day non-insurer nonmember

Group rate discount for insurers for 5 or more; \$45 off/day (all registrations must be submitted together and accompanied by payment by check only).



We are in the process of finalizing topics and speakers. The brochure should be completed by Spring of 2016.

We will also be offering the following sponsorships:

- Break/Meal Sponsorships - \$300 each
- New Member Welcome Reception - \$100 each
- Evening Reception - \$400 each.
- Advertising Sponsorship Opportunities: (1) Full Page Ad - \$565; (2) Half Page Ad - \$315; (3) Card Size Ad - \$185.
- Bag Stuff Sponsorship - \$250
- Room Key Card Sleeve - \$750
- Exhibit Sponsorship Opportunities: \$750 per booth for one person. One additional booth personnel will be charged a reduced conference fee of \$150. (Same price as 2015)

If you are interested in one of the above sponsorships, you can go to www.nspii.com and click on Seminar on the Home Page and then click on Sponsorship.

If you have any questions, please contact Mary Beth Robinson at nspii@nspii.com.



News From Our Florida Chapter

The Chapter President's Message from Harvey S. Meshel...



As 2015 came to a close, we wished everyone a successful new year. As we welcomed 2016, January has been a busy month for many in our field and we are keeping ourselves occupied. Gina Smith advised us that the legislature is still in session and has not passed any fraud or arson legislation.

Our chapter is scheduling a meeting and seminar in April 2016 in the South Florida area, most likely Palm Beach or Fort Lauderdale. At this time, we are requesting that our members submit recommendations on topics they would like to see at our next meeting and seminar.

Please feel free to e-mail me at harvey@hsmconsulting.net with any of your suggestions or questions.

News From Our Illinois Chapter

The Chapter President's Message from Eric W. Moch...



This is my first President's Message since I was elevated to the position in January. I first joined NSPII several years ago and since then, I have held positions on the boards of both the Illinois and National chapters. I have enjoyed every step of the journey so far, and I consider the opportunity to serve the Illinois Chapter to be a very high honor and my most exciting challenge yet. I can't wait to work within our state membership, as well as with members across the country, to make the Illinois Chapter a dynamic organization for training, networking and even fellowship. If ever I can be of service to you, please feel free to drop me a line or give me a call.

I am thrilled to announce that our chapter is teaming with the Illinois Chapters of IASIU, IAAI and NASP to present a full-day training session at the Orland Fire Protection District Regional Training Center on April 8, 2016. The seminar, "Fire Investigation for the Insurance Professional," will include four educational presentations (including one co-presented by yours truly) and two live burn demonstrations. There is NO cost to attend and both morning refreshments and lunch will be provided, although attendance is limited to 125 people and is open only to members of the sponsoring organizations. Register at www.il-iaai.com. I hope to see you there.



Under the **Members Only** section now, each member has the opportunity to provide a **800 character bio**. If you have provided us with your picture, it will automatically show now when you open your member listing. To the right of the picture is where the bio will be displayed.

If you would like to take advantage of this, you just need to e-mail Mary Beth Robinson at nspii@nspii.com your 800 character or less bio. If you would also like to add your picture, e-mail her a high resolution (between 80-100 KB in size) .jpeg formatted picture.



News From Our Indiana Chapter

The Chapter Message from President Michael A. Vergon...



First and foremost, the Indiana chapter board members offer congratulations to Jeff Ferrand (Indiana), who has assumed the role of President of NSPII this year. Jeff has a passion for insurance fraud prevention and we are confident that he will serve NSPII well in this position.

We are also confident that we have outlined a somewhat aggressive year with respect to seminars, educational lunch and learn meetings, and new member recruitment. The largest of these seminars is likely going to be the Midwest Medical Fraud Symposium, scheduled for June 15, 2016, in Indianapolis, at the Indiana Government Center. This seminar was a great success last year, with over 150 attendees from nine states, representing numerous insurance companies, various government regulatory agencies, with officials from Federal and state law enforcement.

With respect to other planned training in which there are common topics of interest, I believe that partnering with other organizations, rather than competing with them for the time and cost to potential attendees, is wise. This has the benefit of giving NSPII greater exposure, promotes dialogue between various entities that may otherwise not come together, and has the potential benefit of increased membership. In this regard, we hope to partner with organizations, such as the International Association of Arson Investigators (IAAI), in setting up a fire investigation-related live burn demonstration and a separate lunch and learn meeting during the summer months.

The Indiana chapter board is also actively analyzing how we go about increased membership in 2016. We have considered several questions that every other chapter and every other organization are probably also considering at all times: Why should anyone join our organization? What does our organization have to offer that other organizations do not? Why have members left and not renewed membership?

Whatever any opinion anyone has regarding the answers to these questions, I believe that it starts with relationship. Although our board is actively reaching out to companies and individuals regarding membership, it's just not up to the board members to promote membership. It's up to every member, and who better to promote membership to than those that we come into contact and work with every day? With that, we earnestly value your opinions regarding NSPII. What more can we offer, and what can we do better?

Please contact Mike Vergon, Chapter President, at (317) 508-0527, or at mavergon@vergonfireinvestigation.com with any questions, ideas, or concerns.

Thank you to the entire membership for your continued support of our organization, and thank you for the many hours of service that you provide in the furtherance of combating insurance fraud. I look forward to seeing you at NSPII throughout the coming year.

Indiana Chapter Update, by Thomas R. Haley, III, House Reynolds & Faust, LLP



The Indiana Chapter heard a very informative and interesting presentation at its most recent lunch and learn meeting. Engineers Jim Cassassa and Bill Dickinson, from Wolf Technical, and Indianapolis attorney Mark Metzger, from Metzger Rosta, discussed the information that can be learned and used from so-called "black box technology," now located on many vehicles. The Chapter wishes to thank Wolf Technical, for sponsoring the lunch and the presentation.

(Continued on page 12)



Indiana Chapter Update *(cont'd.)*

(Continued from page 11)

More accurately referred to as a "crash data recorder," black box technology is designed to help safely operate vehicle functions such as airbags, safety belt restraints, and brakes, and to provide information to engineers in case of deployment or certain actions.

The boxes do not serve as complete accident reconstructions, but can assist with this. It is important to note that consultants are necessary to properly find, review and analyze data from the boxes. This is especially true if preparing information for litigation or use as evidence, such as at a hearing or a trial.

The data does not prove or establish anything in and of itself. Experts must assess it, to draw conclusions, or assist with accident reconstruction. For example, wheels locking up, and vehicle sliding due to hydroplaning, ice or other weather conditions, may affect or skew the data.

Typically, the power must be on in a vehicle for the boxes to function. Most passenger cars from 2006 forward have some version of black box technology. Most with an airbag have this, as well. Many trucks have more complete fleet management systems, which can provide even more information.

Federal rules state that auto manufacturers do not have to capture or record any data. But if they do, certain information must be recorded. This includes information relating to ABS and other braking, vehicle speed, throttle position, driver and passenger seat belt usage, warning lights in operation on a dashboard, engine RPMs, roll angles, and steering path.

If there are multiple impacts in one accident, separate sets of information may be recorded. Usually, no information is recorded about the driver, accident location (a black box is not a GPS unit), weather, or oral information about anything spoken or said inside a vehicle. Dates or times are not recorded either. Instead, "ignition cycles" are established in order, by number.

The data can be downloaded a number of times, not just once. It is owned by the owner of the vehicle. Insurers can point to co-operation clauses in policies, to obtain permission to seek data from the boxes. If a vehicle is a total loss and an insurer pays for and becomes the owner of that vehicle, the insurer then owns the black box information. In addition to owner permission, information can be obtained by court order, police investigation, or from a criminal prosecution.

Indiana has no specific laws relating to obtaining black box technology. Much like all evidence, caution must be used in obtaining and preserving data. Spoliation must also be avoided. Notification of other interested or potentially responsible parties, in a download or moving/destruction of other evidence, should be considered. If properly obtained, data can be preserved and shared with other experts, to assist in claim processing or litigation.

Your Indiana Board continues to plan educational activities, seminars, lunch and learn meetings, and other events for this year. Information about the timing, location and details of events will be sent to members. We hope to see all members at our Indiana functions in 2016!

Articles for Upcoming Newsletter Issues

If anyone has an article they have authored or would like to see reprinted, please e-mail it to me at nspii@nspii.com. Also, if you feel that something you have read or learned in a seminar can benefit the rest of the membership, please submit it for publication in our Newsletter. If I need to obtain permission to reprint an article, please provide me with the information to do so. Do not hesitate to send it to me at any time. Contributions from the membership help to make the Newsletter more beneficial to our members. This is just one way you can become involved and make a contribution.





News From Our Kentucky/Tennessee Chapter

The Chapter President's Message from Michael Hageman...



The 2016 year will be exciting with the merger of the Kentucky and Tennessee Chapters. With this merger, we will have the opportunity to share ideas and training to keep our members up-to-date and to build and strengthen both chapters, individually as well as collectively. We will be offering joint educational anti-fraud seminars in both states throughout 2016. The Boards of both Chapters are currently combining. The Board Members for 2016 are as follows:

President: Mike Hageman – Cincinnati Insurance Co., Fairfield, OH

First Vice President: Scott Brown – Frost Brown & Todd, LLC, Nashville, TN

Second Vice President: Dan Rottmueller – Fire & Explosion Consultants, Dayton, OH

Secretary: Doug White – Kentucky Farm Bureau Mutual Insurance Co., Louisville, KY

Treasurer: Mike Beagle – DiscoveryPro, Inc., Florence, KY

Chapter Delegate: John Bush – Quintairos, Prieto, Wood & Boyer, P.A., Louisville, KY

Tennessee Chapter Delegate: Scott Brown – Frost Brown & Todd, LLC,

Nashville, TN

Board Member: Greg Price – EFI Global, Nicholasville, KY

(2) Open Board Member positions

The Kentucky Chapter conducted a live burn in October 2015 at the Hal Rogers Regional Fire Training Center in Somerset Ky. Special Thanks to the Somerset, KY Fire Department, our presenters Doug Burns and Greg Price, and our sponsors, EFI Global, Inc., Fire and Explosion Consultants, LLC, Rimkus Consulting Group Inc., the City of Somerset, KY, and Cincinnati Insurance. The program included a demo of the Faro 3D imaging scanner.

We are planning our first chapter meeting for the end of March and we are looking at holding it in the Bowling Green, Kentucky area. Watch your email for notification and details. Henry Ott and Rod Jordan of Fire Investigative Consultants will be putting on the program.

We also plan to hold a Chapter meeting later in the year in Nashville, and two other quarterly Chapter meetings.

Please consider attending the 2016 Advanced Insurance Fraud Seminar in November. This year's seminar will be held at the Hilton Chicago/Indian Lakes Resort, 250 W. Schick Road Bloomingdale, IL. Details and registration will be on the website at www.nspii.com.

The board is very excited about the coming year. We hope to present programs that will be interesting and beneficial for all of our current and potential members.



News From Our Missouri Chapter

The Chapter Message from President Jesse J. Sproat ...



The Missouri Chapter is looking forward to 2016. We are in the planning stages with an officers and board meeting on February 24. We are looking at having our annual golf tournament in July and our annual seminar in October. We had a luncheon in November 2015 with a very good turnout and several guests in attendance. Kevin Clark with Boggs, Avellino, Lach and Boggs, LLC spoke on “How Medical Records Can Help Uncover Fraudulent Claims.” We are planning on having another luncheon with another speaker in the spring and possibly in the summer.

Remember, if you know of any profession in the insurance claims industry, please consider asking them to join the chapter.

News From Our Ohio Chapter

The Chapter Message from President Samuel L. Warren ...



Hello and greetings from the Buckeye State! As I write this, I look out the window at snow on the ground and a chill in the air. Where was this weather at Christmas time?

The Ohio Chapter has completed all planning for our 10th annual Ohio Joint Insurance Fraud Seminar, to be held at the Columbus Division of Police, James G. Jackson Training Academy, on Wednesday, March 9, 2016. Again this year, the Ohio Chapter of NSPII was fortunate to partner with the NICB, the Ohio Chapter of IASIU, the Ohio Department of Insurance, and the Ohio Auto Theft Investigators Association (OATIA), to plan, coordinate, and present this important training event. We are fortunate this year to present twelve topics covering myriad information related to the investigation of insurance fraud.

The Ohio Chapter is now actively planning our annual summer golf outing. More information to come!

We are also very pleased to be in the planning stages for a new training endeavor this year, targeted primarily at insurance claim adjusters and claim managers. This will be an “Investigations 101” type training event, geared at recognizing potential elements of fraud in an insurance claim, and then having the tools necessary to initiate a claim investigation. Again – more news to follow!

I’d like to take a moment to thank all of the hard working NSPII members who volunteer their time to serve on the various boards and committees that comprise NSPII, and diligently work to move NSPII forward in becoming a preeminent fraud investigative organization.

2015 was a great year for Ohio NSPII and 2016 is stacking up to be just as good. Hope to see you all around our various industry events.

Ride-Sharing Regulations Arrive in the Buckeye State, by Andrew L. Smith, Esq.



On December 22, 2015, Ohio Governor John Kasich signed House Bill 237, which allows the Public Utilities Commission of Ohio (“PUCO”) to regulate ride-sharing companies in Ohio, including Uber and Lyft. The Bill takes effect later this month on March 21, 2016. This article will explore the background of the ride-sharing industry, and the current status of regulations across the country, with a focus on the new Ohio Bill.

Ride-Sharing Explained

By way of background, “ride-sharing” is a service arranging one-time shared rides on very short notice. This type of carpooling generally makes use of three technological advances: (1) GPS navigation devices to determine a driver’s route and arrange the shared ride; (2) smartphones for a traveler to request a ride from wherever they are located; and (3) social networks to establish trust and accountability between drivers and passengers. Unlike traditional taxi companies, almost anyone can drive for a ride-sharing service. All a driver needs is a car and a smartphone app.

Ride-sharing has been highly controversial, criticized as lacking adequate regulation, insurance, licensure, and training. One of the main ride-sharing firms, Uber, is banned in Berlin and a number of other European cities. Opposition may also come from taxi com-

panies and public transit operators, because they are seen as cheaper, unfair, competitive alternatives.

Uber is the largest ride-sharing provider, valued at **\$50 billion**. It is available in **58 countries** worldwide. Uber averages 30 million rides a month. Uber

operates throughout Ohio, including Akron, Columbus, Cincinnati, Cleveland, Dayton, and Toledo. Lyft is the second largest company. Lyft averages more than two million rides per month, and is valued at \$2.5 billion. It is available only in 30 of the continental United States. Lyft also operates in Akron, Bowling Green, Cleveland, Cincinnati, and Toledo.

Insurance Coverage Gap?

In 2013 an Uber driver hit and killed a six-year-old pedestrian in San Francisco. The driver was not carrying a passenger, but he did have the app turned on. At that time, Uber provided commercial insurance to its drivers while they were carrying passengers, but not when the app was turned on and awaiting passengers. The family filed suit against Uber in January 2014 in the San Francisco Superior Court. *See Liu v. Uber Technologies*, Case No. CGC 14 536979, California Superior Court, San Francisco. A settlement was reached with Uber in July 2015, but filed under seal, of course.

Insurers and critics alike argued this created an “insurance coverage gap” since a personal policy would not apply if the app was on, since the driver is engaged in commercial activity, and neither would Uber’s policy, since the driver is not carrying passengers. Indeed, personal automobile policies ex-

PLICITLY exclude the use of your personal vehicle for hire or commercial use, known as a Livery or Commercial Use Exclusion. However, to date, the Insurance Services Office (“ISO”) has not released a standard ride-sharing exclusion.

Below is an explanation of the three separate periods involved in a ride-sharing transaction:

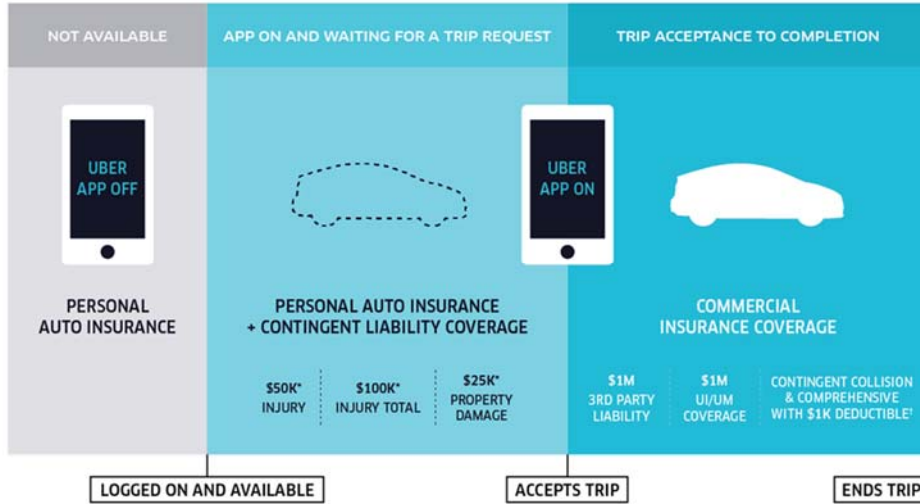
- **Period One:** The driver is logged into the app and driving around looking to obtain business. There are no passengers in the vehicle. The driver has not been contacted and has not accepted a ride request.
- **Period Two:** The driver has been contacted by phone or through the app, has accepted the ride request, and is traveling to pick up the passenger.
- **Period Three:** The driver arrives, picks up the passenger, and actually drives the passenger to his or her destination.

When a driver pulls away after dropping a customer off, his or her personal insurance becomes their primary coverage; the ride-sharing companies only offer secondary coverage. If a driver gets in a wreck during such times, it can take a long time to sort out which insurance company is responsible. So far, there is little to no published noteworthy case law on point. Clarity may be provided in Sacramento, where a 24 year-old Lyft passenger, Shane Holland, was killed in November 2014 in an accident. This is the first time a Lyft passenger has died in an accident.

The following is a chart summarizing Uber’s position on insurance coverage.

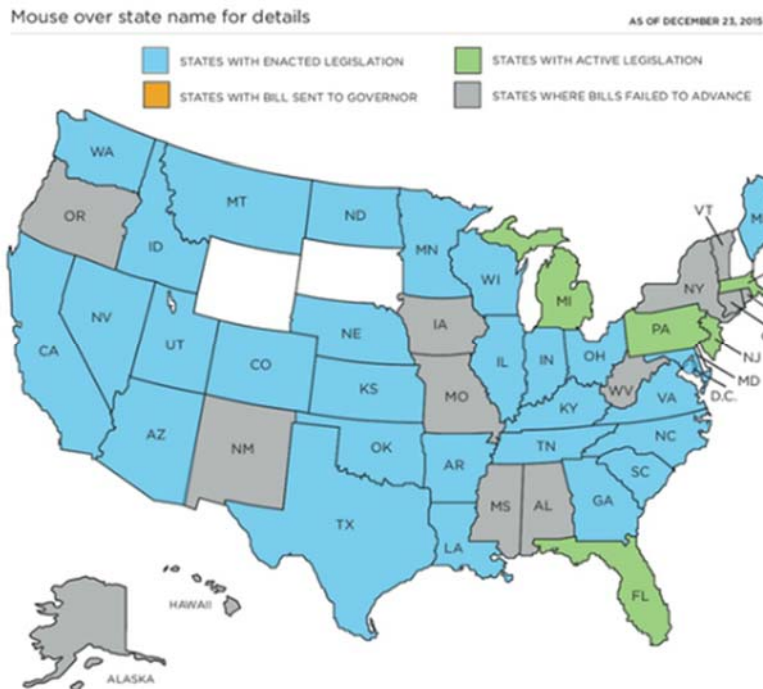
Ride-Sharing Regulations Arrive in the Buckeye State (cont'd.)

uberX RIDESHARING INSURANCE COVERAGE



*PROVIDES AUTOMOBILE LIABILITY INSURANCE IF/WHEN THE DRIVER'S PERSONAL AUTO POLICY DOES NOT PROVIDE COVERAGE.
 †PROVIDES COVERAGE IF DRIVER'S PERSONAL AUTO INSURANCE INCLUDES COLLISION COVERAGE

As a result of the so-called insurance coverage gap, since 2014 a total of 29 states and numerous towns and cities have implemented legislation requiring heightened regulation of the ride-sharing industry. Even more states are expected to join this rapid trend in 2016. Most of the statutes are very similar in nature, with the primary differences focusing on the amount of coverage required to be provided by ride-sharing companies. Is your state next?





Ride-Sharing Regulations Arrive in the Buckeye State (cont'd.)

Ohio House Bill 237

Ohio House Bill 237 becomes effective on March 21, 2016. Under the law:

- Ride-sharing companies must obtain a \$5,000 permit from PUCO to use a digital network to prearrange rides between riders and drivers.
- Ride-sharing companies must disclose how fares are calculated, provide a receipt, conduct background checks on drivers, and maintain records for two years.
- Ride-sharing companies must institute non-discrimination policies, accommodate service animals, and provide a method for requesting wheel-chair accessible vehicles.
- Drivers must be 19 years or older, pass criminal background checks, and not committed any type of serious vehicle-related offense in the last 13 years.
- The Bill specifies drivers are not employees, nor agents of the companies, unless a written contract between the driver and the company says otherwise.

The 13-page Bill sets minimum levels of commercial auto insurance drivers must carry:

- In phase one, the period when the rideshare app is on and the driver has not yet received a request for a ride, the ride-sharing company, driver, or a combination of the two, are required to obtain coverage with minimum liability limits of:
 - \$50,000 of coverage for bodily injury liability per person;
 - \$100,000 of coverage for

bodily injury liability per accident; and

- \$25,000 for property damage.

- In phases two and three, when the driver has a rider in the car or has accepted a request for a ride via the app, the minimum liability limits increase to \$1,000,000 because of bodily injury or death of one or more persons or injury to property of others in any one accident.
- In all three phases, the ride-sharing company's coverage is primary and does not require a personal auto insurer to deny a claim before coverage is available.

While the insured driver would have a duty to cooperate with his or her own insurer's investigation involving an insurance claim, this in turn raises the question of whether a similar duty apply to the third-party ride-sharing company. California answered this question in the affirmative in their statute. Likewise, Ohio's statute states as follows:

*In a claims coverage investigation, a transportation network company and any insurer providing automobile insurance *** shall cooperate to facilitate the exchange of relevant information with directly interested parties and any personal insurer of the transportation network company driver, if applicable.*

Conclusion

Ridesharing companies like Uber and Lyft are here to stay. In 2015 Uber rides increased by 400% in 2015 and Lyft rides increased by 700%. For the first time, Uber passed car rentals as business travelers' top mode of choice for getting around town. This is a con-

stantly evolving industry and regulations will continue to grow and change.

Ride-sharing litigation will be sure to follow in the Buckeye State. In December 2015 an Uber passenger was pulled under the rear wheel of an SUV while entering the vehicle and died as a result in Columbus. Earlier in September 2015 a woman was also allegedly assaulted by an Uber driver here in Cincinnati.

Be sure to stay updated on the latest news, including the important new House Bill 237, which will drastically change the way Uber and Lyft operate here in Cincinnati and throughout Ohio.

Andrew L. Smith is a senior associate attorney in the Cincinnati, Ohio office of Smith, Rolfes & Skavdahl Company, LPA who concentrates his practice in the areas of construction law, insurance defense, and bad faith litigation defense. Andrew has extensive experience in state and federal court handling complex civil litigation matters. He is also the co-host of BearcatsSportsRadio.com and an avid UC Bearcats follower.

Understanding and Documenting Lost Income Claims, by Michael G. Sherwood and Edward M. Cambra

PART I: UNDERSTANDING LOST INCOME CLAIMS

An individual or a business may have a compensable loss of income claim based on a variety of causes, such as fire, water damage, theft, employee theft, vandalism, vehicle accident, faulty contractor work or personal injury. This article will use the general term lost income in dealing with these types of claims. It includes business interruption, lost profits and lost earnings. Wrongful death claims have their own unique challenges and are beyond the scope of this article. If the claim is brought by a first-party insured, the terms and limitations of the policy are in effect, as determined by the insurance company, will control the coverage of the loss. If a claim is brought by others, common law principles and specific state laws will govern. Insurance coverage is usually provided by the liability portion of the policy. The common legal term is "actual loss sustained", which generally means pre-tax net lost income due to the peril.

THE LOSS CALCULATION

To have a lost income claim, sales must be lost, not merely delayed and then recouped within a reasonable period of time. This includes extra expenses incurred to avoid or minimize lost sales. The injured party has a legal duty to make reasonable efforts and work to mitigate their loss. Increased sales of other products may help to offset lost sales. Subcontracting work that was normally done in-house prior to the peril is often a viable option to help reduce the loss.

Lost sales are determined by subtracting actual sales from projected sales. The net loss is calculated by subtracting the costs not incurred that correspond with lost sales. Extra expenses such as overtime worked over normal levels are included as part of the loss.

PROJECTING LOST SALES

Total sales should be projected based on expected sales during the loss period, using a variety of methods, based on historical growth trends and other relevant factors. Seasonality of the business needs to be considered. Jewelry sales are a good example of a type of business where monthly sales vary significantly depending on the time of year. For losses lasting more than one year, the cyclical nature of the industry should be analyzed. Other important factors may include the weather and changes in competition, technology and the economy. The nature of the business and extent of the loss are obviously significant. Reasonable and rational methods should be utilized. If only one wing of a motel or a limited number of apartments in an apartment complex become uninhabitable, there may be no loss or a limited amount of loss, if vacant units are available and tenants transfer or guests use another room.

NON-CONTINUING COSTS

Many operating costs normally continue at their normal rates during the property restoration period. Some costs stop completely, some costs are reduced and some costs may increase.

After lost revenue has been determined, related non-continuing / saved costs must be calculated and deducted from lost sales to arrive at net lost income. If a hamburger is not sold, the restaurant or grocery store does not incur the cost of the hamburger. (It may have a compensable inventory loss for spoiled food, under the separate business personal property portion of the policy). Other costs are also saved, such as supplies (wrappers, condiments, packaging, etc.). Hourly wages and related payroll taxes and expenses may continue or be reduced. Saved operating expenses often include bank debit or credit card fees, calculated as a percentage of sales. Depending on the nature of the peril and

the length of the loss, historical fixed expenses, such as managers and other salaries, insurance, employee hospitalization may continue at their normal rates. Rent and utilities vary on a case by case basis, as do many other costs that are usually considered fixed or semi-variable. The forensic accountant reviews all expense categories and details to the extent necessary to make a proper allocation.

EXTRA EXPENSES

Extra expenses are above normal costs incurred to reduce the overall lost income. They may include a move to a temporary facility and its ongoing rent (less saved rent at the loss location), overtime premium, subcontract work less saved costs, expedited freight and other expenses.

OTHER IMPORTANT CONSIDERATIONS

Lost income insurance policies are normally written using the "bottom up" approach, defined as forecast net profit or loss plus continuing expenses. Most lost income calculations in practice use the "top down" approach, projecting lost sales and deducting non-continuing expenses to calculate compensable lost profits. Both methods will yield the same results.

Lost income needs to be calculated using the accrual basis of accounting rather than the cash basis of accounting, so that sales and receipts and expenses and disbursements are properly matched. A business often collects for its sales or services in the weeks or months after selling the goods or providing the service. Likewise, it often pays for its purchases in the weeks or months after receiving the goods, so calculating the loss on a cash basis would lead to improper and unjust results. Paying for expenses incurred be-

(Continued on page 19)



Understanding and Documenting Lost Income Claims (cont'd.)

(Continued from page 18)

fore the peril or after the loss is not owed.

Many health care service businesses bill their patients and insurance carriers much more than they expect to collect. Amounts paid to the business are limited to usual, customary and reasonable charges or other agreed upon schedules or contracts. Patients often do not pay the share that they are billed, due to financial constraints or other reasons. Projected lost billings must be reduced to likely net collections, based on the historical records and trends of the business. This must be taken into account and the reported amounts revised accordingly.

PART TWO: DOCUMENTING LOST INCOME CLAIMS

What and how much documentation is needed for lost income claims? There are no hard and fast rules because the information to be requested is dependent on the nature of the business, the type of loss, the length of the loss period, the time of year, the reliability or inconsistency of the data provided and other factors. The right amount of data to be requested needs to be customized for each loss. The requests should be specific but not limiting, without being overly broad or too detailed. Boxes of financial documentation or thousands of pages of electronically scanned data are generally not necessary for many lost earnings claims. Additional source documentation will be required for the analysis of potential fraudulent claims. Keeping the above statements in mind, commonly requested and required data includes:

A COPY OF THE LOSS CLAIM MADE AND ALL SUPPORTING DOCUMENTATION USED

This should go without saying, but the insured, claimant or plaintiff is respon-

sible for submitting and adequately supporting their loss claim. Detailed schedules showing what was claimed and how the loss was calculated should be obtained along with reasonable documentation. To be thorough, the production of documents request should ask for copies of all support used in the loss calculations and provided to outside experts, whether relied upon or not used in their reports. Additional data may also be needed.

TAX RETURNS

The data on the tax returns often forms the bedrock of the loss calculation, as the amounts reported are deemed most reliable because they are filed with an outside party, the U.S. government. Complete copies of Federal Income tax returns for the business, with all schedules and attachments are to be obtained. Attachments should include copies of all Wage and Tax Statements form W-2s for individuals. Tax returns for one, two and possibly three years prior to the date of the peril are used for comparison and analysis purposes. Additional returns for four and five prior years may be considered; older years returns are rarely needed.

For a small business operating as a sole proprietorship or one-owner limited liability company, the main form is IRS form 1040 Schedule C, Profit or Loss from Business. However, as stated above, you need to obtain and review the entire 1040 for other possible related income and expenses and to gain an understanding of the all owner's income. When the business is operating as a Partnership, C-Corporation or S-Corporation, you also need to obtain the appropriate form 1065, 1120 or 1120S, in addition to the owner's personal returns.

Be aware that the small business owner controls his or her wages and they are most often based on the profitability and cash flow of the business. The income of both the individual and the partnership or incorporated business

must be considered together as a whole to determine the actual loss sustained. The owners' wages should be considered part of net profit.

FINANCIAL DATA, INCLUDING ACCOUNTING AND PAYROLL RECORDS

Additional details of income and expense in the form of financial statements and other schedules will likely be helpful in calculating and supporting the loss. Useful financial statements may include balance sheets, statements of cash flows, budgets and projections. Loan applications are another good source of data, if applicable.

A detailed laundry list of possibly relevant accounting records may include property records, including fixed asset depreciation schedules, deeds, mortgages, leases, options to purchase, rental agreements, insurance policies, licenses, sales and purchases contracts, credit records and reports etc. Also inventory records, sales journals or reports, invoices, cash register tapes, purchase journals, invoices, bank statements, cancelled checks, accounts receivable and accounts payable reports, employee expense reports etc. Caution: as noted above, the data requested must be specifically tailored to the loss claim and limited to relevant documentation. A reason for each document requested may be useful and helpful to obtain the data needed.

Payroll reports for the period of time before, during and after the end of the loss period are often needed. Be careful of what they are called – payroll journals, ledgers, schedules, etc. The specific names vary, and some attorneys and others like to quibble about terminology, so be specific, but only up to a certain point. Was labor expense saved due to the peril, did it continue at normal rates, or was extra overtime incurred to help mitigate the loss?

(Continued on page 20)

Understanding and Documenting Lost Income Claims *(cont'd.)*

(Continued from page 19)

Continuing payroll is part of the loss of income calculation, not a separate compensable amount.

Understand the difference between cash flow and operating expenses. For example, payment of loan principal is not a compensable expense. The interest portion of the payment usually is. Loan amortization schedules should be obtained. Additional borrowing and the related expenses are not compensable, as this is considered a lack of adequate capital for the business.

Depreciation is a common area of misunderstanding. Fixed asset depreciation schedules are needed to calculate the saved depreciation expense for the

loss calculation. If an asset is destroyed that was currently being depreciated, that expense cannot continue and it stops. Insurance may cover the fair market value of the damaged asset. To continue its depreciation expense in the loss calculation will result in an overpayment of the loss.

CONCLUDING COMMENTS

Calculating lost income claims with a reasonable degree of accounting certainty is a complex area. While not rocket science, it includes the application of many concepts and specifics that the ordinary business person, accountant or CPA has not dealt with previously and is thus prone to errors. Even if proper calculation methods are

use, the expert's findings are still dependent on the use of reasonable assumptions and estimates. To obtain a fair result, assumptions must be deemed likely, not merely possible and loss calculations based on accepted principles.

Michael G. Sherwood, CPA, CFE, CFF and Edward M. Cambra, CPA, CFE, shareholders in the forensic accounting firm of Johnson, Cambra & Sherwood, Inc., with offices in Cleveland, Indianapolis and Cincinnati. Both are long time NSPII members; Mike is the current Ohio Chapter treasurer and Ed the past president of the Indiana Chapter.

Words Matter When Requesting an Examination Under Oath, *by Andrew*

L. Smith, Esq.



An unfortunate fire loss destroys the building where a small, bustling company and your insured, Dunder Mifflin Paper Company, is headquartered. A number of suspicious circumstances surround the loss. Employee and town volunteer sheriff deputy, Dwight Schrute, claims another employee, Jim Halpert, set the fire. Counsel requests the Examination Under Oath ("EUO")

of Dunder Mifflin's "corporate representative." Dunder Mifflin designates its regional manager, Michael Scott, as the corporate representative. Your counsel then requests additional EUOs from Jim Halpert, Dwight Schrute, and the company's CEO, David Wallace. Counsel for Dunder Mifflin is hired, and objects, claiming the company will only submit Michael Scott for the one

and only EUO permitted under the terms and conditions of insurance policy. What do you do? This is a common situation in nearly every insurance claim involved a corporate entity as the named insured, and the answer is not always so clear.

(Continued on page 21)

Words Matter *When Requesting an Examination Under Oath* (cont'd.)

(Continued from page 20)

What Does the Policy Say?

The insurance policy contract gives the insurer the right to compel an EUO pursuant to the terms and conditions of the policy. If the policy does not permit the testimony the insurer wishes to obtain, requesting a Sworn Statement is always an option. Nevertheless, while a Sworn Statement is a helpful, information gathering tool, it is not nearly as powerful of a tool as an EUO. First, a Sworn Statement is completely voluntary in nature – an insurance policy contract cannot mandate a third-party witness to provide a Sworn Statement. Second, the witness' statements obtained through a Sworn Statement cannot be used directly against that witness when considering potential policy exclusions for actions such as fraudulent misrepresentation or concealment.

You must read the exact language of the EUO provision contained in the insurance policy at issue between the insured and insurer. Not every EUO clause is created equally. This is especially true when the named insured is a corporate entity, such as a corporation or limited liability company. Consider the following provisions contained in the standard "duties in the event of loss" clause of any insurance policy:

- "We are permitted to examine the named insured under oath."
- "Permit us to examine any insured under oath, outside the presence of any other insured at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed."
- "The insured, as often as may be reasonably required, shall submit to examinations under oath by any

person named by this Company, and subscribe the same."

- "You are required to submit to one or more Examinations Under Oath, outside the presence of any other insured." The policy further defines "you" and "insured" to include "any and all employees, agents, directors, and officers of the Company."

Review of the Case Law

The following case decided in U.S. District Court for the Southern District of Florida is instructive. In *Vision I Homeowners Assn., Inc. v. Aspen Specialty Ins. Co.*, 674 F.Supp.2d 1333 (S.D.Fla. 2009), the defendant insurer argued it was entitled to summary judgment on the claim of breach of contract because the plaintiff insured failed to comply with its request to provide additional EUOs. The insured submitted a corporate representative for EUO and provided the insurer with numerous documents before the EUO, but the insured would not submit additional individuals for EUO, nor did the insured's witness sign and signature and errata pages to his transcript of testimony. The policy stated, in pertinent part:

We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records.

The court noted that there was no provision in the policy that required that the insured subject itself to more than one EUO, despite the fact that the policy stated that the insurer was entitled to examine "any insured." Further, "there is no provision as to when [the witness] was required to sign the EUO answers. *Id.* at 1341. Therefore, the court held it could not find "that Plaintiff has failed

to comply with the EUO requirements under the policy, failed to produce requested information, or failed to cooperate in the investigation." *Id.* See also *El Dorado Towers Condo. Assn. v. QBE Ins. Corp.*, 717 F.Supp.2d 1311, 1319-1320 (S.D.Fla. 2010).

In addition to the issue regarding who exactly can be examined, be careful when assuming the insurer has the right to conduct multiple EUOs outside the presence of each witness. Not every policy contains the specific language noted above when dealing with this issue – "You are required to submit to one or more Examinations Under Oath, outside the presence of any other insured." Courts have been hesitant to imply a right to separation of witnesses where this policy language is absent.

For instance, in *United States Fidelity & Guaranty Co. v. Hill*, 722 S.W.2d 609 (Mo. Ct. App. 1986), the Western District Court of Appeals in Missouri held the right to take EUOs separate and apart from the other insured is not a given right to the insurer, absent a policy provision on point. The court, in reviewing the policy, stated:

There is certainly nothing in the power to request an insured to submit to more than one examination under oath from which it could be implied that the company had discretion to demand that the examination be separate and apart. The only way this court could reach the result requested by USF&G would be to rewrite the policy and to add provisions which are not now there nor which are contended to be contained by a reasonable construction of the language employed. USF&G would have this court undertake a complete rewriting of the provisions providing for the examination

(Continued on page 22)



Words Matter When Requesting an Examination Under Oath (cont'd.)

(Continued from page 21)

under oath. That is beyond the power of the courts in this state.

Id. at 611. See, e.g., *Ahmadi v. Allstate Ins. Co.*, 22 P.3d 576, 580 (Colo. Ct. App. 2001) (“Because the policy here contains a requirement for an examination under oath, but does not impose an additional requirement that the examination be held separately and without any other claimants being present, we conclude that the trial court erred in holding that the claimants had breached the cooperation clause.”); *Georgian House of Interiors v. Glens Falls Ins. Co.*, 21 Wn.2d 470, 151 P.2d 598 (Wash. 1944).

What Are My Options Where the Policy Language is Lacking?

Insurance policies typically contain a general clause imposing a “duty to cooperate” with the insurer’s investigation. This clause is usually found in the same list of provisions as the EUO clause in the duties in the event of loss or damage section of a policy. The duty to cooperate clause, along with the clause pertaining to “concealment of material facts,” can be of assistance

when the insured company refuses to submit to more than one EUO.

Indeed, a court could very well determine the failure to submit more than one corporate representative would hinder the insurer’s investigation. A showing that the witness’ anticipated testimony is relevant to the issues and facts implicated by the loss. If this is demonstrated by the insurer, failure to submit additional corporate agents for EUO could be seen as a violation of the duty to cooperate and concealment of material fact provisions of a typical insurance policy.

However, not every court may view the duty of cooperation clause so broadly. Indeed, in *Ahmadi v. Allstate Ins. Co.*, 22 P.3d 576, 579 (Colo. Ct. App. 2001), the Colorado Court of Appeals rejected the insurer’s contention the insured’s refusal to consent to the request for sequestration of multiple EUO witnesses constituted a violation of the duty to cooperate clause of the insurance policy.

Conclusion

Words matter. Always review the exact terms and scope of your insurance

policy’s EUO clause. Never assume the policy require certain actions on the part of the insured or contains certain provisions – not every policy is identical. This issue can further be complicated in the corporate context where questioning potentially multiple witnesses may be necessary to thoroughly investigate an insurance claim.

If you cannot rely upon the exact language of the EUO clause to your benefit, always consider the duty to cooperate provision, and potentially other duties and obligations imposed by the policy.

Andrew L. Smith is a senior associate attorney in the Cincinnati, Ohio office of Smith, Rolfes & Skavdahl Company, LPA who concentrates his practice in the areas of construction law, insurance defense, and bad faith litigation defense. Andrew has extensive experience in state and federal court handling complex civil litigation matters. He is also the co-host of BearcatsSportsRadio.com and an avid UC Bearcats follower.

Coalition Against Insurance Fraud Benefits

Benefits of joining the Coalition Against Insurance Fraud are:

- Invitation to attend Coalition member meetings.
- Free advertising on InsuranceFraud.org.
- NSPII representatives will have the opportunity to be appointed to serve on task forces and specialized coalitions in areas that may be of interest to NSPII members.
- A custom weekly e-newsletter.
- The Coalition works closely with their association members to sponsor joint research projects, white papers and other products to advance the interests of the anti-fraud community.



National Society of Professional Insurance Investigators® (NSPII®)

As a non-profit organization, the Society of Professional Insurance Investigators was formed in 1983. The purpose of the Society is to provide the recognition, encouragement, and support to individuals who demonstrate the highest degree of professionalism in conducting insurance investigation. A few years after its first meeting, the Society added "National" to its name. This change was the foundation of national involvement in the organization.

Through the Society's cooperative relationship with the insurance industry, governmental units and agencies, community leaders and related organizations, its members work to educate the insuring community regarding fraud recognition and prevention. The Society further serves as a catalyst in the collection and dissemination of the most up-to-date investigative ideas, procedures, and techniques. To date, there are hundreds of members across the country. Besides the National, there are several state chapters and others currently being formed.

The Society sponsors seminars and workshops offering in-depth case management and concepts and principles for fraud detection and prevention.

Through the Society's Newsletter, members are kept abreast of relevant legislative issues and actions as well as recent court decisions.

The Society also serves as a resource center providing technical and legal information to the industry as it becomes available.

NSPII® members benefit from a number of ways to set themselves apart in a tight and competitive field. Whether you are continuing your education or seeking a new opportunity, membership in NSPII® can give you a career edge by allowing you to learn more about the industry. Membership in the Society is comprised of the following categories:

- Investigators
- Insurance Claims Personnel
- Attorneys
- Forensic Experts
- Criminal Investigators.
- Retirees
- Educators

Associate membership is open to professionals who may not meet the full membership requirements, but who may otherwise wish to enjoy the benefits of the Society.

All Full and Associate Members must be actively engaged in the recognition and prevention of insurance fraud.

No matter your specialty or in what area you work, networking is one of the most valuable NSPII® benefits. With NSPII®, you can choose to network in the ways that suit you best. Attend our Annual National Convention, attend local chapter meetings, or attend continuing education forums to talk with colleagues.

Though NSPII®, you are represented as a Professional and as an Industry, in local business and to the general public. NSPII® speaks for the insurance investigation professional and we strive to give our members the tools and information they need to assist their clients in making educat-

ed claims decisions. Through public relations campaigns and our public relations outreach programs, NSPII® tells the public how insurance investigations, when done correctly, add value to their insurance policies.

The Society holds its annual Advanced Insurance Fraud Seminar in November each year. Each Chapter of the Society meets at least two times each calendar year. Guest speakers, formal presentations, and meeting locations are announced in advance through the Society's Newsletter, mail or e-mail.

Each year at its Annual Seminar, the Society honors four individuals under the following four award categories:

- **F. Lee Brininger Award** - Investigator of the Year Award.
- **Public Service Award** - To be given to a member of the public sector for "professionalism, dedication, and accomplishment in the fight against fraudulent insurance claims and/or arson."
- **Outstanding Achievement Award** - To be given to a Society member for "outstanding achievement in the fight against fraudulent insurance claims."
- **President's Award** - To be given to a Society member for "outstanding and exceptional service to the Society." Awarded at the discretion of the outgoing NSPII® President.