

FRYEday Report

A Publication of Frye Claims Consultation & Administration

VOLUME 15 ♦ NUMBER 1 ♦ WINTER 2011



Tom Frye

THE CLAIM FORCE OF TOMORROW - TODAY!

In the 1990s we rushed to replace what we viewed as corporate liabilities (secretarial and clerical positions) with corporate assets (computer, other communication devices) so that one does his/her own file preparation, filing, address keeping, letter writing, voice mail listening, etc. This insidiously adds many hours of routine clerical tasks to almost every professional's weekly routine.

However, there are ways and means to successfully introduce transformative change to our firms which allow us to actually realize productive gains from technology.

Large companies typically implement one of two claims handling models. In one, the claims offices are located across the country in most localities – many of those hold the most expensive real estate and rows of cubicles populated by adjusters who spend the day on the computer or the telephone.

In the other model, the insurers implement the inside claim adjusting concept, but place the claims force in a few "hub" centers in various large regional or district offices throughout the country. This configuration illustrates technology permits centralization of many functions; but, handling claims in this fashion present several problems or limitations most notably it is not efficient to pay for expensive real estate to house a function which largely involves interacting with technology – a computer, a telephone or a fax machine.

Insurers may wish to reconsider these models and truly embrace technology and manage differently. There are substantial gains to be made from technology if we allow ourselves to realize them. Here are some ideas:

Offshore as Much Routine Work as Possible

There is a great deal of simple claims work: A rock breaks a policyholder's windshield: A tree limb causes minor roof damage. Insurers could

identify all of their routine claim work and send it offshore to lower cost call centers with appropriately trained customer service personnel trained and this is not difficult to do despite early experiences with such outsourcing. There are successful service

providers who do this and in the process offer cost savings to their customers.

Consider Eliminating the "Local" Claims Office

Some of us live in cities with outrageous real estate costs: San Francisco, New York, Chicago and we should question if it is reasonable for an insurer to pay those high costs when people spend largely their day on the computer or the telephone. This function can be located anywhere.

Eliminate or Centralize Hubs

I hate to sound old (but I am) but I remember when claim adjusting was considered a terrific job – even a profession. But I believe this feeling may be lost in our current environment.

In my view, if we do maintain claim handling in-house then we should centralize it in a lower cost area and try to control the claim volume in that environment.

Go Virtual – Now

Provide claim staff with appropriate technology and let them do their jobs in a lower cost, more efficient, and an employee friendly way. There are many mid-level claims which are neither routine nor complex and they can generally be handled at one's desk either by telephone or by

computer. So why acquire expensive real estate for this function when employees can perform this work from their home. Set up employee home offices and while it is a somewhat self-serving it is nonetheless true that you can receive assistance on complex cases from appropriately trained independent claim adjusters and those folks should manage themselves.

But can the insurance industry yield the control the aforementioned suggests? Yes we can and we must!

Thoroughly train staff, pay a competitive wage and insist on top performance measured against industry-wide benchmarks and this change not only works but will work better than our current models.

New Management Style

The suggestion that most claim staffs may be outside the direct gaze of claim management is generally not a comfortable place for management staff but it is a lofty space we must reach.

The technology is out there and it offers great efficiencies and cost savings. However, we must look forward to changing the culture of our companies if we are to take full advantage of what is available.

Consider in the late 1990s consulting firm McKinsey & Co. found six of the economy's 59 sectors accounted for virtually ALL productivity growth. But from 2000 to 2003 the top seven sectors accounted for only 75% of the productivity increase and five of the top contributors were SERVICE industries.

The *NY Times* article entitled "What Makes a Nation More Productive" documents service industries have become more productive in recent years by continuing to invest in information technology. As evidence that the paradigm has shifted Walt Swanson, a customer service engineer for Agilent, hasn't seen his boss in three years and that is becoming the norm. In fact, no one is certain where anyone is anymore, and what is amazing is how little it appears to matter.



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WORKERS' COMPENSATION FORUM

Apportionment to Pre-Existing, Non-Industrial Condition Involving Separate Body Part System

Mills v. WCAB (2008 – 5th DCA; Unpublished) 73 CCC 812; 36 CWCR 138

Applicant was a longtime drywall finisher with a history of pulmonary problems. Despite the pulmonary issues, he was able to perform his usual and customary work. On October 7, 2002, he sustained orthopedic injuries in a fall from a scaffold. He also claimed that the fall aggravated his respiratory condition. Since shortly after his fall, applicant has been confined to a wheelchair.

The AME testified in deposition that the orthopedic and pulmonary conditions combined to render the applicant totally permanently disabled. The doctor noted that the pulmonary

condition accounted for 60% of the disability. The AME reported that two other doctors believed that applicant was totally disabled and a third opined that he had 75% PD from the pulmonary condition alone.

The WCJ relied on the AME's opinion and found that applicant's orthopedic injury caused 40% PD and the non-industrial pulmonary condition 60%. Applicant sought reconsideration.

Applicant argued that SB 899 did not allow apportionment to disabilities that develop after the injury in a different part of the body and that the AME's report was not substantial evidence.

The Board panel found that the WCJ had correctly interpreted the AME's

report. The panel concluded, based on the AME, applicant had sustained two separate injuries: an industrial orthopedic injury resulting in 40% PD and a non-industrial pulmonary injury resulting in 60% PD. Applicant sought a Writ of Review.

The 5th District Court of Appeal discussed the new apportionment scheme in LC §§ 4663 and 4664 and found that the WCJ and WCAB panel had correctly applied the law. Addressing the applicant's contention that the pulmonary condition was not disabling prior to his fall (he was able to perform his regular duties) and, therefore, any disability after the fall should be entirely work-related, the Court noted that eliminating an



employer's liability for "lighting up" a non-disabling pre-existing condition is precisely what was intended by the legislature when enacting SB 899.



Managing Generation X: What motivates younger workers?

2

More than 40 million American workers are in their twenties or early thirties. To stereotype these workers is dangerous, but managers need to understand what motivates younger employees. Here are four ways managers can get through to "Gen X" employees, and motivate them to work hard:

X Help them "train for another job." It sounds ridiculous, but younger employees realize that the old "employment contract" is no more. It is understood they won't stay with one company for their entire career. So, ironically, the way to keep them is to help them acquire skills that will make them more marketable later on. The more they can learn, the more they'll want to stick around.

X Give them responsibility for projects. Younger workers have more of an independent spirit than Baby Boomers or older workers. Rather than mistake this quality for a liability – e.g., a refusal to stick to



procedures – treat it as an asset. Give them clearly defined goals – and the freedom to achieve them in their own way.

X Offer constant informal feedback rather than periodic performance reviews. Younger workers expect a lot of feedback from managers. Formal, sporadic performance reviews are not timely enough to keep up with the rapid pace younger employees work best at.

X Offer them access to many different kinds of information. Younger workers grew up in the computer age, and are quite adept at using different data and technology to bring together seemingly unrelated elements and solve a problem. Managers who hoard information are stifling the greatest resources younger workers bring to the table.

Adapted from *HR Focus* (American Management Association)



Quote
of the
Quarter

"A fundamental rule in technology says whatever can be done will be done."

~ Andy Grove
Former CEO - Intel

LIABILITY FORUM Duty of Care - Assumption of the Risk

CASE

Ellyn Levinson, et al. v. Bert Owens, et al. Court of Appeals, Third District (August 26, 2009)

FACTS

There have been a number of recent cases dealing with the doctrine of assumption of the risk. This case explored the issue of whether the defense was overcome because the risk of danger had been increased by the defendant.

Bert and Anne Owens hosted a barbeque at their cattle ranch to celebrate a recent victory by attorney Ellyn Levinson arising out of a lot line adjustment case. Levinson brought her daughter, Rachel, to the barbeque. When questioned she indicated she was experienced in riding horses. Levinson was given a horse named "Pistol" to ride. After mounting the horse and exiting the stable, Pistol began to gallop and Levinson was thrown from the horse when Pistol abruptly cut to the left. Levinson hit a fence and shattered her hip and cut her face.

Levinson sued Owens for her injuries. Owens moved for summary

judgment based on the primary assumption of the risk doctrine. Levinson opposed the motion by stating the defendants increased the risk of horseback riding by placing Levinson, an inexperienced rider, on a highly trained cattle horse, and failing to properly train her. The trial court granted the motion for summary judgment. Levinson appealed.

The Court of Appeal affirmed. It noted that horseback riding is a dangerous sporting activity. The risk of being thrown off a horse is an inherent risk of horseback riding. There is no duty to protect riders from the risk of injury inherent in riding a horse.

In this case, the Owens were not commercial renters of horses for riding. They did not invite Levinson to come to their house to ride the horse. Rather, they granted her request to ride one of the horses while at the barbeque. Thus, the primary assumption of the risk doctrine applied.

There was no evidence that Owens increased the risk of such activity. No evidence was shown that the horse was anything but gentle and

comfortable around people. Levinson was riding the horse at her request. It was not during an instruction, and it was only after she stated she was an experienced rider. There was no evidence that the horse was unduly dangerous. The horse was precisely the type of horse one would expect to find at a ranch. Levinson did not warn the Owens about her skill level, and in fact assured them she had the experience to ride horses. Having accepted her word, the Owens did nothing to increase the risk of harm.

The Court stated that when a person who provides a horse is a social host, not a commercial operator, not an organizer of horseback riding events, but is simply consenting to a guest's request to ride a horse while at the host's home for a gathering for another purpose, and the guest professes to have experience, it would be contrary to existing policy to impose a duty on the host for the



injury. Further, there was no duty to warn of any risk involved in riding the horse. This incident appeared simply to be the result of a horse unexpectedly behaving as a horse and galloping off for no apparent reason. For all these reasons, the Court concluded that summary judgment was correctly granted for the defendants. This judgment was therefore affirmed.

COMMENT

This opinion reaffirms the applicability of the assumption of the risk doctrine to activities such as horseback riding.

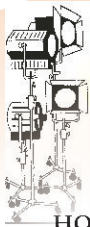


10 LEADING PROPERTY/CASUALTY INSURANCE COMPANIES



RANK	COMPANY	COUNTRY	NET WRITTEN PREMIUMS (P/C ONLY)	COMBINED RATIO	NET INCOME
1	Allianz S.E.	Germany	\$63,891,696,200 ¹	95.1%	\$6,383,721,000 ¹
2	State Farm ²	U.S.	\$47,374,936,505	113.0%	-\$673,000,000
3	Chartis, Inc. ³	U.S.	\$46,374,936,505	116.4%	N/A
4	AXA S.A.	France	\$38,445,168,200 ¹	95.5%	\$1,363,627,600 ¹
5	Assicurazioni General S.p.A.	Italy	\$32,382,474,000 ¹	96.4%	\$1,267,908,600 ¹
6	Tokyo Marine Holdings, Inc.	Japan	\$31,799,731,200 ¹	99.7%	\$185,128,000 ⁴
7	Zurich Financial Services	Switzerland	\$30,922,000,000	98.1%	\$3,039,000,000
8	Allstate Corp.	U.S.	\$26,584,000,000	99.4%	\$228,000,000
9	Berkshire Hathaway Inc.	U.S.	\$24,209,000,000 ⁵	105.1%	N/A
10	Liberty Mutual Holdings Co. Inc.	U.S.	\$22,246,428,969	99.6%	\$1,140,000,000

(1) Converted to applicable rate, Euro=\$1.4726. (2) Includes State Farm Mutual Automobile Insurance Co. and State Farm Fire and Casualty Co. (3) Formerly American International Group Inc. (4) Converted to applicable rate, Japanese Yen=\$0090.



Spotlight On Humor

How Do You Decide Who To Marry?

(Written by Children)

HOW DO YOU DECIDE WHO TO MARRY?

You got to find somebody who likes the same stuff. Like, if you like sports, she should like it that



you like sports, and she should keep the chips and dip coming. – Alan, age 10

No person really decides before they grow up who they're going to marry. God decides it all way before, and you get to find out later who you're stuck with. – Kristen, age 10

WHAT IS THE RIGHT AGE TO GET MARRIED?

Twenty-three is the best age because you know the person FOREVER by then. – Camille, age 10

HOW CAN A STRANGER TELL IF TWO PEOPLE ARE MARRIED?

You might have to guess, based on whether they seem to be yelling at the same kids. – Derrick, age 8

WHAT DO YOU THINK YOUR MOM AND DAD HAVE IN COMMON?

Both don't want any more kids. – Lori, age 8

WHEN IS IT OKAY TO KISS SOMEONE?

When they're rich – Pam, age 7

The law says you have to be eighteen, so I wouldn't want to mess with that. – Curt, age 7

The rule goes like this: If you kiss someone, then you should marry them and have kids with them. It's the right thing to do. – Howard, age 8

IS IT BETTER TO BE SINGLE OR MARRIED?

It's better for girls to be single but not for boys. Boys need someone to clean up after them. – Anita, age 9 (bless you child)

and the #1 favorite is . . . HOW WOULD YOU MAKE A MARRIAGE WORK?

Tell your wife that she looks pretty, even if she looks like a truck. – Ricky, age 10



FRYE ALL STAR

JON BARTOLOME



Jon Bartolome and Son, Marley

California bred an opportunist eager to learn and challenge myself to the fullest. Born and raised in the Bay Area, my experience in the insurance industry began at Frye Claims back on September 11, 2006. During my first year I developed a strong interest for automotive claims at the retreat of 2007, in New Orleans, because of close friends who had been involved in collisions and were taken advantage of because they did not know enough about insurance regulations and laws.

I have also assisted in Sub-Rosa cases. I recall a case located in Palo Alto, CA, which was focused on a woman claiming left wrist and shoulder injuries

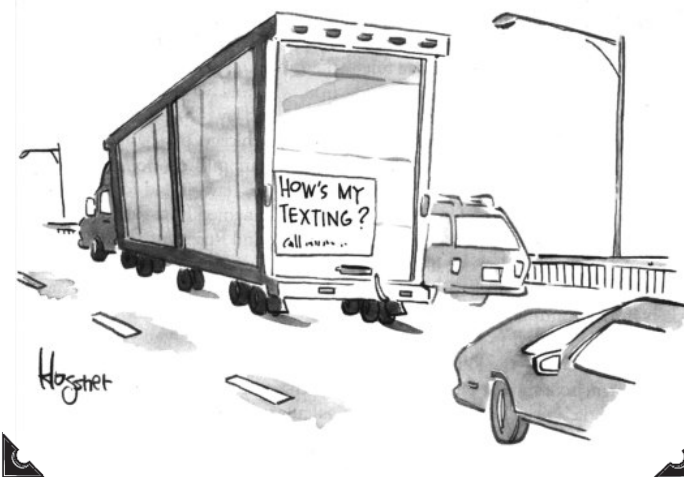
however she was observed and captured on film in the act of bowling! With tactful planning and execution, we were able to obtain video without any conflicts.

Other than insurance work, I have a passion for music. Having never learned to play a piano, I became a self-taught producer, sound engineer and lyricist. My passion for music lives within Hip Hop, not rap, because there is a difference. I appreciate the depth of the lyrics as well as perfectly

harmonized instrumentals and it is a unique platform for an artist to sing or rap to. I am also passionate about being a devoted father and providing for my two year-old son and fiancé who is currently in school full-time to become a dental hygienist.



Comedy Corner



2009 BEST INSURERS TO WORK FOR:

1. Amerind Risk Management Corp., Santa Ana, NM
2. ARAG Insurance Co., Des Moines, IA
3. Capitol Insurance Cos., Middleton, WI
4. Chubb Group of Insurance Cos., Warren, NJ
5. CompWest Insurance Co., San Francisco, CA
6. Eastern Insurance Holdings, Lancaster, PA
7. Island Insurance Co., Ltd., Honolulu, HI
8. Key Risk Insurance Co., Greensboro, NC
9. ProAssurance Corp., Birmingham, AL
10. The Progressive Corp., Mayfield Village, OH

Source: *Business Insurance*

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A Publication of Frye Claims Consultation & Administration

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Claims Consultation & Administration
3500 Breakwater Court, Building A
Hayward, California 94545
Telephone: 800-322-FRYE (3793)
Fax: 800-455-FRYE (3793)
International: 001510 7829882
001510 7824276 (Fax)
www.fryeclaims.com