



### ~ Our Mission ~

*"A professional organization dedicated to the ongoing education of the claims community. Providing an arena for member interaction and the sharing of resources."*

Next Regular Meeting: January 16, 2015  
Time: 11:30am Location: Billy Baroo's  
*See inside for more details*

## Choose to be Thankful

By **Tom Williams**, PSAA President, Partners Claim Service

The holiday season is upon us. As soon as Halloween was over, the ads for Black Thursday and Black Friday started up. Thanksgiving decorations went up and were then replaced by Christmas decorations, even before Thanksgiving came and went. This is a busy time of year. For many, this is their favorite time of year. For others, this is a painful and difficult time of year and they do their best just to get through it.

Since November of 2013, I have had some hard times to work through. Over the last year, I have lost two of my older brothers. One passed away from Alzheimer's and the other from ongoing complications from a stroke. One passed away in November of 2013 and the other in October of 2014. This has been a challenging time to say the least. It has been especially hard on my parents who are 90 and 83 and have watched two of their sons die in a year's time.

Most likely now, the fall/winter and holiday season will mean difficult memories for my family, and for many other families out there. However, good things happen to us all the time too. We have many things that we can be thankful for. Unfortunately, we often allow the difficult and challenging times to blot out the good times and the good things that we experience.

This last October, I took my daughter to California as she moved there. This was a very difficult time for me. She is my first child and she has now left. However, a week later she informed me that she had just gotten engaged. This was expected as her fiancé had just asked

— See **Choose to be Thankful...** continued on page 3



Please advise us when your email address changes! Thank you!

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**PSAA Next Luncheon Mtg**



**Next Meeting:** January 16, 2015  
**Time:** 11:30am to 1:00pm  
**Location:** Billy Baroo's Bar & Grill  
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**Menu:** TBA  
**Cost:** Members \$20 Vendors \$25  
**Presentations:** Check the January issue for these details  
**Please RSVP:** [www.PugetSoundAdjusters.org](http://www.PugetSoundAdjusters.org)  
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**Happy Holidays to You & Yours  
from PSAA!**

**Additional Meeting Information**

Please keep in mind that we'd like to start and end promptly during our monthly meetings. Here is the timeline for each meeting:

- 11:30 a.m. Registration
- 11:45 a.m. Buffet
- 12:00 p.m. Meeting Called to Order
- 1:00 p.m. End of Meeting

Please arrive on time and have your cash or check (payable to PSAA) ready, or provide your online payment receipt. We appreciate your cooperation and assistance.

**November Meeting Winners!**

**Lizzy Adkins** of Sams & Associates won the Adjuster drawing for \$25. **Bob Shupe** of Cleaner Guys won the Vendor drawing for \$25.

**Blue Bucket:** No winner. Goes up to \$200!

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## Choose to be Thankful...

(Continued from front page)

me when I drove her down to California. So, that's great news. I can either allow myself to wallow in self pity over losing my daughter, or I can share in her excitement and happiness for what lies ahead. I'm choosing to be thankful for my time with her and for the fact that she found a wonderful guy that loves her and wants to spend the rest of his life with her.

All of us face these choices every day. In our profession, as in most others, we have victories and we have losses. We face challenges and difficult circumstances and we experience times where everything seems to go right. We can't always control our circumstances, in fact, we normally can't control them. However, we can control how we face those circumstances. We can see challenges for what they are, challenges, not the end of the world. When we see things for what they really are and choose to focus our attitude in a positive way, it is amazing how obstacles that used to seem insurmountable suddenly just become another challenge to overcome.

So, as we come into the holiday season, whether this is a difficult season for you or a season that you normally enjoy, remember to see all the challenges you face for what they are. I'm not saying all challenges are the same, but, we all have challenges. The real issue is how we face them.

Choose to focus on what you have been blessed with. Focus on the loving relationships you have in your life. Be thankful you have a job and a home and food.

If we focus on what we have and what is good, we become grateful. When we are grateful, it changes the way we view our jobs, the way we treat others, and our outlook on life in general. Then, we can all enjoy the holiday season as it is meant to be enjoyed.

Merry Christmas and Happy Holidays to you all. 

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## Claims Conversation

with **Roger Howson**, Claims Dispute Resolution, PSAA Newsletter Editor & Education Chair, TCAA Past President

I've been writing this Claims Conversation column for ten years or more, but all this time it's been more soliloquy than conversation. For the sake of generating more feedback (and because I'm typing this whole thing out on my iPhone so Barb Tyler can get the newsletter out on time) I am formatting this month's piece as a (mercifully) short questionnaire.

If you were to invent a Claims Professional for the 21st century, how would you answer the following questions?

1. If you can't call them an adjuster how would you label them?
2. What is their job description?
3. What skills, competencies, training, and education would be required?
4. What are their responsibilities?
5. What is their authority?
6. Should these Claims Professionals be independent?

(See **Claims Conversation...** continued on page 5)

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**Claims Conversation...** (Continued from page 3)

- ent and autonomous from the direction of insurance companies, policyholders, and claimants?
7. If you answer yes to #6 above, should Claims Professionals only be compensated by and answerable to the Office of the State (or a Federal) Insurance Commissioner?
  8. How would you determine compensation: per claim, per diem, per dollar amount of claims handled, or as a salaried position?
  9. What kind of licensing, bonding, and/or continuing education should be required?
  10. Should adjusting be centralized, regionalized, moved in office, increased field presence, or eliminated entirely?

The winning response will be rewarded with a free subscription to the PSAA Newsletter... contingent upon you being a member in good standing of PSAA.

In closing, one of my 2015 New Year's resolutions is to never again write a PSAA Claims Conversation on my iPhone while my wife is asking me how much longer I'll be working. ☺

*Editor's Note: This is no doubt one of Roger's shortest articles! Perhaps his New Year's resolution is one that needs to be broken! You can respond to his survey questions by contacting him at his email address (which is almost as long as his articles): rogerhowson@claimsdisputeresolution.com or for a shorter version: rogerhowson@claimsdispute.com.*



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**Coming Up in 2015!**

**PSAA Bowling & Meeting**  
 February 20

**PSAA Annual Spring Symposium & Vendor Fair**  
 March 20  
 @ Billy Baroo's

Watch for details coming soon!

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# The Event Data Recorder or "Black Box"

By Elvin Aycock, PE, ACTAR, I-ENG-A Advisor  
 Reprinted from The Forensic Engineering Report, a publication of the Investigative Engineers Association

Many adjusters, new to automobile accidents claims, are surprised when we tell them that all cars have "Black Boxes." The "Black Box" is usually stored under the driver seat or in the middle console between the seats. It is also known as an Event Data Recorder (EDR).

Most EDRs are built into a vehicle's airbag control module and record information about the deployment of airbags as well as pre-crash data from the engine control module, such as vehicle speed, throttle position and engine speed. This information is recorded immediately before (usually 5 seconds) and immediately after a vehicle impact.

Most Event Data Recorders record the speed in one second increments beginning 5 seconds prior to impact. The report will show you the speed of the vehicle at 5 seconds, 4 seconds, 3 seconds, 2 seconds and at 1 second prior to the collision. For example, if the report said the vehicle was going 62 mph at 5 seconds prior to impact and the posted speed on the roadway was 45 mph, then the driver was traveling 17 mph over the speed limit.

The report will also show if the brakes were engaged, what the throttle position was and if the seat belts were engaged. This information can be very useful to a claims adjuster as well as to the investigating reconstruction engineer.

Not all car manufacturers make Event Data Recorder data available for download. Your local traffic accident reconstruction engineer can determine if the data can be downloaded from the vehicle involved in an accident.

The Event Data Recorder is a very good reconstruction tool and its use grows each year. However, the data from the EDR report should not be used as a stand-alone measure of speed. A reconstruction of the accident should be performed to support the report. The use of the EDR tool, along with the reconstruction report prepared by an experience and Certified Forensic Engineer provides great evidence that can be used to assist the Adjuster in claims review. ❖

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# Investigating Slip, Trip & Fall Incidents

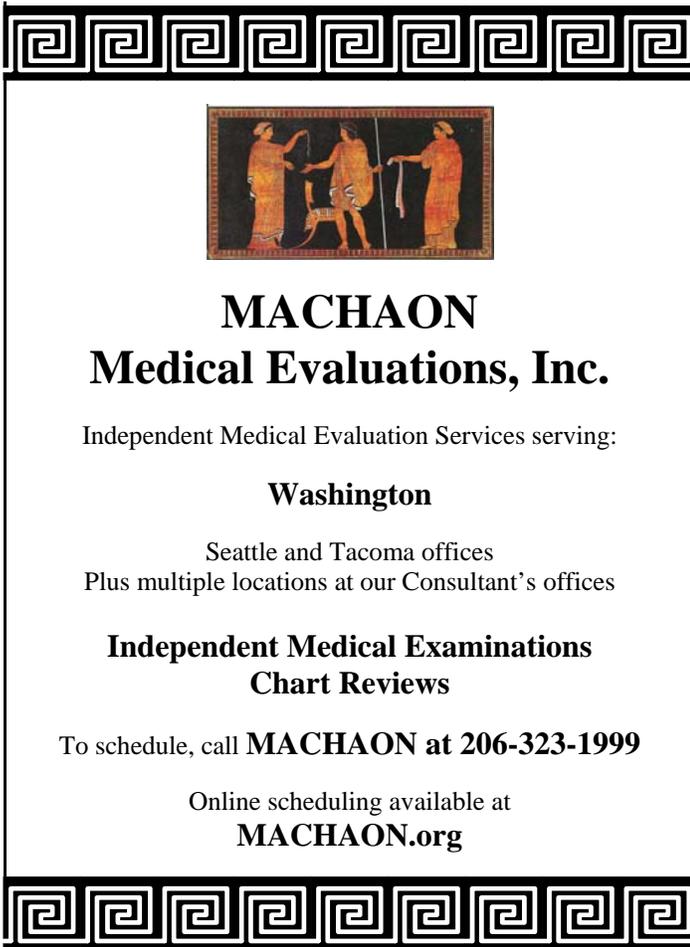
By Lewis W. Ernest, PE, I-ENG-A Advisor  
 Reprinted from The Forensic Engineering Report, a publication of the Investigative Engineers Association

As winter approaches there will be a higher frequency of slip/trip and fall incidents, especially in areas of snow and ice accumulation on walking surfaces. We should all be mindful of walking conditions on slick surfaces and exercise extreme caution when we are walking in those areas. In reality, however, slip/trip and fall incidents occur in many everyday situations. A trip over a rug in a commercial building, a fall on a stairs or irregular walking surface or a slip on a wet surface in the produce department of a grocery store are a few examples of common slip/trip and fall incidents. In many cases a slip/trip and fall incidents are purely an "accident" where no party is totally or partially at fault. In some cases, however, a fall incident can be attributed to an improper or unsafe conditions and there may be "fault" to be associated with the incident. Where potential fault is suspected with a slip/trip and fall incident, it would be prudent to investigate the factors surrounding the incident, especially if there is injury to the victim.

I-ENG-A members are trained in the aspects of these type incidents and slip/trip and fall topics are covered at many of our annual conventions. The study of slip/trip and fall incidents involves many common sense factors as well as scientific disciplines and engineering principles. An engineer can evaluate many factors involved in a fall incident to determine if it was a pure accident or if there were faults that could be attributed to the incident. Some of the common areas where an engineer could be helpful in analyzing a fall incident include:

- Physical Conditions — Determining whether the victim's health or physical condition was a factor in the incident (i.e. age, disability, ailments, impairments, gait, eyesight, normal human locomotion, unimpeded walking ability, etc.).
- Walkway Conditions — Evaluating walkway conditions (i.e. sidewalks, floor surfaces, stairs, ramps, etc.) to determine if they were built/maintained properly and in accordance with proper codes and if there were any flaws in the walkway surface that may have contributed to the incident.
- Coefficient of Friction and Walking — Analyzing the cause(s) of a slip incident usually includes the

(See Slip, Trip & Fall... continued on page 11)





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**Slip, Trip & Fall...** (Continued from page 9)

measuring the tractive properties of the combination of the shoe sole material and the walkway. The coefficient of friction is a measure of how easily a surface will slide over another surface. Engineers have several methods to test friction conditions and to determine if an abnormal slip condition caused or contributed to the fall incident, and/or if improper footwear was a factor.

- **Lubricants and Contaminants** — These substances that may come between a shoe sole and the walkway may alter tractive characteristics of the surface. An engineer can determine if this was a factor in a slip and fall incident.
- **Transition Between Surfaces** — Abrupt changes in the tractive properties of a walkway are the cause of many slip/trip and fall incidents. An engineer can determine if an abnormal transition condition was a cause or factor in a fall incident.
- **Stairways** — Stairways are a major source of fall incidents. The Consumer Product and Safety Commission has reported that stairs rank second only to bicycles as the most hazardous consumer product. Engineers are well trained to evaluate whether an improperly built/maintained stairway or handrail system was a factor in a fall incident.
- **Illumination** — The illumination levels (especially on stairways), as well as walkway textures, shadows, traffic levels and walkway slopes are other variables that can influence fall incidents. Engineers are well equipped to determine if improper lighting or other factors caused or contributed to a slip/trip and fall incident.

In conclusion, we encourage our readers to be very mindful of unsafe walking conditions during the winter months, as well as during your normal walking activities. ❖



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## To Defend, or Not to Defend?

— By Kyle Riley

### Trial Court Cannot Delay This Determination

**From the desk of Kyle Riley:** Can the court delay a ruling on an insurer's duty to defend and allow discovery to proceed in the coverage lawsuit that is potentially prejudicial to the insured in the underlying lawsuit?

**Claims Pointer:** No. The trial court must look to the complaint and the insurance policy to determine if the insurer has a duty to defend the insured and may not delay such a ruling for discovery issues. Also, the court may conclude that an insured can withhold documents that are prejudicial to it in the underlying action. Further, all discovery logically related to the underlying claims should also be withheld until such claims are fully adjudicated.

*Expedia, Inc. v. Steadfast Ins. Co., 180 Wash2d 793, 329 P3d 59 (2014).*

Beginning in 2004, approximately 80 lawsuits were filed against Expedia, Inc. ("Expedia") by states, counties, and municipalities for allegedly failing to

collect the right amount of local occupancy taxes from its hotel customers. Expedia tendered most of the suits to Zurich, although some were tendered late. Zurich refused to defend Expedia on a number of grounds, including late tender and that the underlying suits may be excluded from the policies' coverage. The policies provide Expedia with coverage for any liability for "damages arising out of a negligent act or negligent omission . . . in the conduct of Travel Agency Operations." The policies further specify that Zurich has a "duty to defend any Suit against [Expedia] seeking damages." Finally, the policies require Expedia to notify Zurich as soon as is practicable of an "Occurrence, a negligent omission or an offense."

In November 2010 Expedia filed suit against Zurich for a declaratory judgment as to Zurich's duty to defend, insurance bad faith, and a violation of Washington's Consumer Protection Act. Zurich responded and claimed that no coverage existed and that there is no duty to defend or indemnify Expedia. Zurich also asserted various defenses including late tender, known loss, material misrepresentation, and mistake.

Expedia then moved for summary judgment regarding Zurich's duty to defend it. Zurich moved for a continuance to seek discovery relating to, among other things, Zurich's late notice, misrepresentation, mistake, and known loss defenses. Expedia declined to provide all the documentation that Zurich had requested on the grounds that the requested information was potentially prejudicial to Expedia's interests in the underlying actions. The trial court agreed with Expedia that there was a dangerous overlap between the discovery seeking Expedia's knowledge or intent regarding its liability for the payment of the certain occupancy tax amounts. However, the trial court declined to decide the issue of Zurich's duty to defend until discovery was complete because the court could not decipher which discovery requests would be prejudicial to Expedia in the underlying actions. Expedia sought appellate review of the court's denial to hear its duty to defend motion.

The issues on appeal were: (1) whether the trial court was incorrect in delaying ruling on Zurich's duty to defend Expedia from third-party lawsuits; and (2) whether the trial court was incorrect in allowing discovery to proceed that was potentially prejudicial to Expedia in third-party lawsuits.

In Washington, the duty to defend is different from and broader than the duty to indemnify. The duty to defend is triggered if the insurance policy con-

(See Case Study... continued on page 15)



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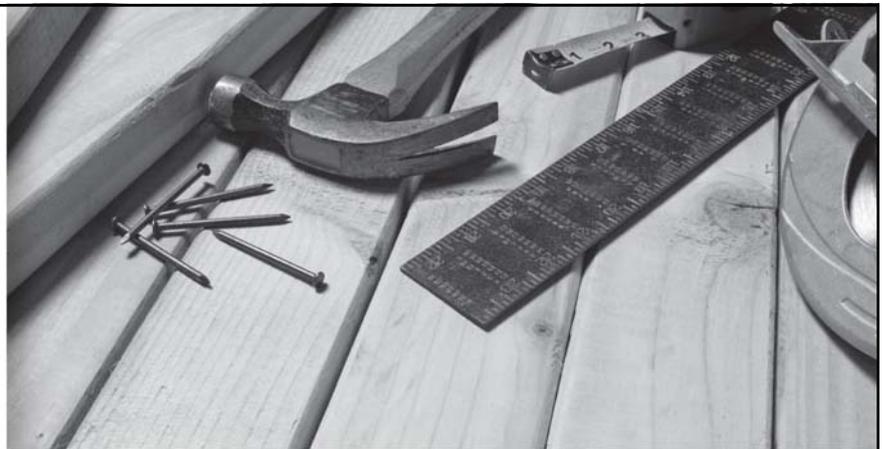
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**Case Study...** (Continued from page 13)

ceivably covers allegations in the complaint. The duty to defend arises when a complaint against the insured, construed liberally, alleges facts which could, if proven, impose liability upon the insured within the policy's coverage. A late tender defense to the duty to defend requires the insurer to prove that it was actually and substantially prejudiced by the late tender.

The Washington Supreme Court concluded that the trial court should have heard Expedia's motion and determined whether Zurich had a duty to defend Expedia. Once the trial court concluded Zurich's duty to defend, the Court advised, then Zurich could have attempted to prove its defenses. In the meantime, however, Zurich should have been required to defend Expedia if the trial court found that the duty to defend had been triggered. Thus, the Court concluded, the trial court was incorrect to delay the ruling on Zurich's duty to defend.

The Court also concluded that the trial court ruled incorrectly on the discovery issue. Prior Washington case law makes it clear that the duty to defend must be determined from the complaint and the insurance policy. Thus, the Court concluded that the duty to defend cannot be delayed by discovery. Accordingly, the Court remanded the case to the trial court to determine Zurich's duty to defend Expedia in each of the underlying cases and further ordered the trial court to stay discovery in the coverage action until the trial court can make a factual determination as to which parts of discovery in the coverage action are potentially prejudicial to Expedia in the underlying litigation. ❖

— To view the full opinion and/or to be notified of new cases, please send an email to: [caseupdate@smithfreed.com](mailto:caseupdate@smithfreed.com)

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Provided By *PSAA Vendor Partners Shannon Lyons (CRDN) and David Kean (DLS)*

Winter storms and cold temperatures can be hazardous, but if you plan ahead, you can stay safe and healthy. Prepare your home and cars. Prepare for power outages and outdoor activity. Check on the older adults.

Although winter comes as no surprise, many of us are not ready for its arrival. If you are prepared for the hazards of winter, you will be more likely to stay safe and healthy when temperatures start to fall.

Many people prefer to remain indoors in the winter, but staying inside is no guarantee of safety. Take these steps to keep your home safe and warm during the winter months:

### Winterize Your Home

- Install weather stripping, insulation, and storm windows.
- Insulate water lines that run along exterior walls.
- Clean out gutters and repair roof leaks.

### Check Your Heating Systems

- Have your heating system serviced professionally to make sure that it is clean, working properly and ventilated to the outside.
- Inspect and clean fireplaces and chimneys.
- Install a smoke detector. Test batteries monthly.
- Have a safe alternate heating source and alternate fuels available.
- Prevent carbon monoxide (CO) emergencies.
- Install a CO detector to alert you of the presence of the deadly, odorless, colorless gas. Check batteries regularly.
- Learn symptoms of CO poisoning: headaches, nausea, and disorientation.

### Don't Forget to Prepare Your Car

- Service the radiator and maintain antifreeze level.
- Check tire tread or, if necessary, replace tires with all-weather or snow tires.
- Keep gas tank full to avoid ice in the tank and fuel lines.
- Use a wintertime formula in your windshield washer.
- Prepare a winter emergency kit to keep in your car in case you become stranded. Include blanket, food and water, booster cables, flares, tire pump, and a bag of sand or cat litter (for

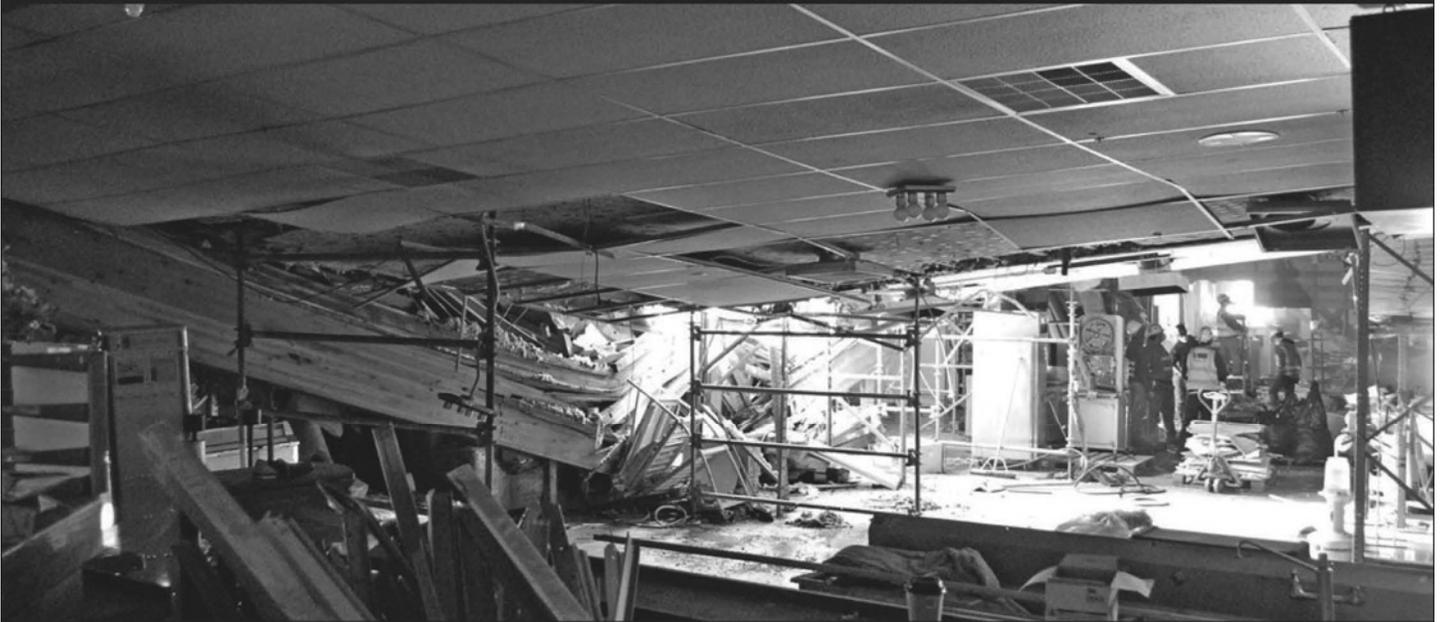
(See **Prepare Yourself...** Continued on page 19)



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## Prepare Yourself... (Continued from page 17)

traction), compass and maps, flashlight, battery-powered radio, and extra batteries, first-aid kit; and plastic bags (for sanitation).

### Equip in Advance for Emergencies

- When planning travel, be aware of current and forecast weather conditions.
- Be prepared for weather-related emergencies, including power outages.
- Stock food that needs no cooking or refrigeration and water stored in clean containers.
- Ensure that your cell phone is fully charged.
- Keep an up-to-date emergency kit, including battery-operated devices such as a flashlight, a National Oceanic and Atmospheric Administration (NOAA) Weather Radio, and lamps, extra batteries, first-aid kit and extra medicine, baby items, and cat litter or sand for icy walkways.

### Take These Precautions Outdoors

- Wear appropriate outdoor clothing: layers of light, warm clothing; mittens; hats; scarves; and waterproof boots.
- Sprinkle cat litter or sand on icy patches.

(See **Prepare Yourself...** Continued on page 20)



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**Prepare Yourself...** (Continued from page 19)

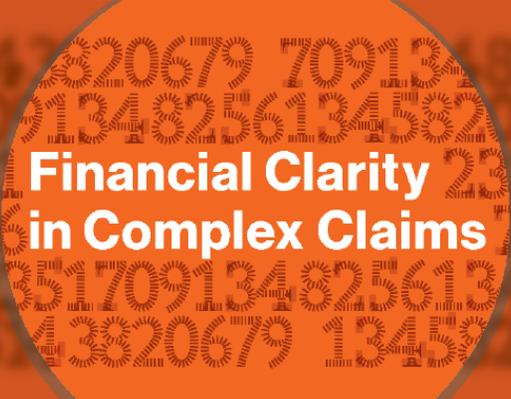
- Learn safety precautions to follow when outdoors.
- Be aware of the wind chill factor.
- Work slowly when doing outside chores.
- Take a buddy and an emergency kit when you are participating in outdoor recreation.
- Carry a cell phone.

**When You Plan to Travel**

- Be aware of current and forecast weather conditions.
- Avoid traveling when the weather service has issued advisories.
- If you must travel, inform a friend or relative of your proposed route and expected time of arrival.
- Follow these safety rules if you become stranded in your car: stay with your car unless safety is no more than 100 yards away, but continue to move arms and legs; stay visible by putting bright cloth on the antenna, turning on the inside overhead light (when engine is running), and raising the hood when snow stops falling; run the engine and heater only 10 minutes every hour; keep a downwind window open; make sure the tailpipe is not blocked.

Above all, be prepared to check on family and neighbors who are especially at risk from cold weather hazards, like young children, older adults, and the chronically ill. If you have pets, bring them inside. If you cannot bring them inside, provide adequate, warm shelter and unfrozen water to drink.

No one can stop the onset of winter. However, if you follow these suggestions, you will be ready for it when it comes. ❄️



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# From Trash to Treasure: Salvor Can Help to Manage Losses

By **Patricia-Anne Tom**

Reprinted from *www.claimsjournal.com* (June 2011)

When crises occur, one person the claims adjuster, insurer and insured should consider calling is a salvor — he or she can be a valuable partner in helping to clean up the trash, and broker the sale of any salvageable items, according to Hilton Harvison Jr., catastrophe team manager at Callan Salvage & Appraisal Co. Inc. in Memphis, Tenn.

“A salvor is often unknown or unseen, but he can help minimize the loss and maximize the returns on behalf of the client, whether the client is the insurer, an independent adjuster, the insured, the risk manager or risk management department, or some combination of those parties,” he said.

The salvor also can help to determine the inventory and value of items, furnishing the claims representative with a comprehensive report detailing the loss before getting a return on the damaged merchandise.

## A Valuable Team Member

When working with a salvor, think of the person as an important member of the team, Harvison said. The team includes the salvor, accountant, attorney, restoration companies, and any other specialized contractors. The salvor should have an agreement signed by the salvor, adjuster and insured so everyone understands their roles in the process, and the salvor has a document that legally permits him to dispose of the merchandise.

The salvor typically is brought in early on in the process, often before the adjuster arrives. And it's important to communicate well with the salvor, so that he or she understands all of the facts surrounding the loss.

The salvor will want to know the location of the loss, extent of damage, contact names and numbers, contractors involved, the type of loss, product restrictions and limits, and any tasks or responsibilities that need to be addressed. He or she also will want to know what kind of insurance policy the customer has, as well as answers to several questions, such as:

- Are the items are insured at cost?
- Is co-insurance involved?
- What is there extra coverage for?

(See **Salvor...** continued on page 23)

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## Salvor... *(Continued from page 23)*

control rodents, bringing in income to the loss situation.

### Valuing Inventory

Before a loss can be fully adjusted, almost all policies require some sort of inventory, Harvison said. An insured needs an account of what was lost, but the salvor also wants an inventory of what will be sold for salvage. It's important for the salvor and adjuster to do a walk-through of the loss site before a restoration company does any work, to ensure the inventory is properly accounted for and segregated, he said. And all parties must agree on what type of inventory is warranted — whether it's a physical inventory, book inventory or perpetual inventory.

For instance, a retail clothing store may have a sales rack, which should not be mixed with other merchandise because the inventory would be valued at the sales price. If merchandise is mixed, then the insurer would overpay the claim for the sales items, Harvison explained. If inventory is washed away by a flood, it might be unrecognizable, in which case a book inventory, with the help of a certified public accountant, could be constructed.

Merchandise can be valued in different ways, using the raw material value, manufacturing cost, manufacturer's selling price, distributor's cost, distributor's selling price, cost and retail. Different valuations, or a combination, may be necessary depending on the loss, he said, and a salvor can help make those determinations.

The value of goods will be affected by, among other things, the:

- Degree of damage;
- Location;
- Variety;
- Brands and labels; and
- Current salvage market on related items.

"There's a difference between a salvage appraisal and the loss and damage appraisal," Harvison said. "The loss and damage appraisal is what the loss is

to the insured, whereas the salvage appraisal is the value of what the goods can get on the salvage market."

Once the inventory has been verified, the salvor will value and prep the items for sale to maximize the recovery. Very often, the salvor knows the best way to dispose of the merchandise to get the highest return. So it's better to have the salvor broker the sale, rather than let the insured retain the salvaged merchandise. Insureds, because they have a vested in the merchandise, often value the goods higher than they are actually worth, Harvison added.

On the other hand, when a professional salvor handles sales of the merchandise, he or she often has access to more markets, which can help to maximize the recovery.

At the end of the process, the salvor will provide the risk manager or claims representative a final report documenting the salvage operation, including details on the inspection and damage, which steps were taken during inventory and what was required to prep the materials for sale; and the value of the inventory, noting any total loss or actual sales values.

Even when a loss situation does not require merchandise to be salvaged, a salvor can serve as a valuable loss consultant, based on his or her experience in previous crises. For instance, a southern chicken hatchery had thousands of its chickens die from a disease known as "black vomit," Harvison said. While the insured was not covered for the event, the salvor nevertheless sampled the chickens and feed that was being used by the insured, and found improper contaminants in the feed were responsible for the chickens' deaths. Although the salvor did not provide an inventory or even attempt to salvage anything in this instance, based on those laboratory results, the insured had data it could use to subrogate against its feed supplier, he said.

Ultimately, when a loss occurs, it would behoove insurers to at least consider whether they could use the services of a salvor. "He's often the only person who can help the parties involved get money back after a loss," Harvison said. ❖

To submit an article to this publication contact Barb Tyler at [npassist@msn.com](mailto:npassist@msn.com) or 541/937-2611. Length of the article is not as important as its content, which should be educational in nature.