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"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: November 16, 2018

Renaissance Hotel, Seattle

— See page 2 for details



Claims Conversation

with **Roger Howson**

— Page 3



Case Study

— Page 6



— Page 9

IICF Week of Giving Oct. 13-20

— Page 13

PSAA HALLOWEEN

Bowl-A-Thon

ACME Bowling & Billiards
Friday, October 19

Lunch 12:00pm
Bowling 1:00pm to 3:00pm

Not a bowler??? Join us for lunch at noon!

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Holiday Karaoke & Costume Party

December 7
Renaissance Hotel ~ Seattle

Stay tuned for details!





**2018-19
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Legal Update Presenter:
Aaron Young, Brown Bonn & Friedman, LLP

PSAA Next Luncheon Mtg

Next Meeting: November 16, 2018

Time: 11:30am to 1:30pm

Location: Renaissance Seattle Hotel

515 Madison Street
Seattle, WA
206/583-0300 www.marriott.com/Seattle

Cost: Claims Personnel—Active Member Status
No charge for lunch or parking

Vendors & Non-Members
\$35 if paid in advance (\$50 @ door)
Parking \$12

Presentations: Claims Stories with presenters from JS Held
Legal Update with Aaron Young, of Brown
Bonn & Friedman, LLP

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To RSVP or to stay in touch with PSAA use our social media tools listed below!

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To sponsor a meeting contact Keely Abbas.

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To submit an article to this publication contact
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September Winners!

\$25 Adjuster Drawing:

David Mandt, Professional Claims Services

\$25 Vendor Drawing:

Cheryl Strickland, US Customs

Membership Drawing...

The winner of the \$100 Lowe's gift card for renewing his annual dues was **Jason Workman** of Grange Insurance!



It pays to attend a meeting!

It's easy to RSVP for a meeting or an event on our website! Although PSAA claims members need not pay to attend our monthly meetings or events, we still need to know who's coming.

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Claims Conversation

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

Woody Allen once responded to a dinner invitation with a last-minute telegram (for you Millennials and younger, a telegram is a Neanderthal version of email) which read, "I apologize for such late notice in declining your kind offer, but it took me this long to think of an excuse."

However, I was appropriately prompt in sending my own regrets, so Lizzy Adkins is excusing me from this year's October 19th PSAA Bowling Tournament because I provided her with a note from my doctor stating that bowling (and/or hanging out with loud, rambunctious adjusters, attorneys, and vendors) is not on the list of approved activities following brain surgery.

When someone tells me that I should have my head examined it's usually a rhetorical insult, but the aggrieved party doesn't specifically recommend a cerebral angioplasty. That would be like someone suggesting I'm overdue for a colonoscopy instead of accusing me of having my head up my ass.

Apparently, I have a brain aneurysm that requires neurosurgeons to remove the side of my skull, peel away part of my face, and then root around in my brain until they can clip off the offending blood vessels. I am assuming in good faith that those surgeons will then carefully replace my skull, re-cover my face, smooth out any obvious wrinkles, and sew me up tight enough that nothing rattles around up there.

Since they're going to be working up there anyway, I inquired about having the doctors turbo-charge my mental capacity, improve my fading

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
- 1:30 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.



Save these dates in 2018-19

Oct 19	Halloween Bowl-A-Thon @ ACME Bowl
Nov 16	PSAA Meeting at Renaissance Hotel
Dec 7	Holiday Karaoke & Costume Party at Renaissance Hotel
Jan 18	PSAA Meeting at Renaissance Hotel
Feb 15	Broken Valentine Bowl-A-Thon at ACME Bowl
Mar 15	Claims Carnival & Vendor Circus at Renaissance Hotel (Annual Symposium)
April 19	Golf Tournament Hole Sponsor Breakfast Auction at Northshore Golf Course
May 17	Past Presidents and Vendor Appreciation Luncheon at Renaissance Hotel
June 21	PSAA Annual Golf Tournament at Northshore Golf Course



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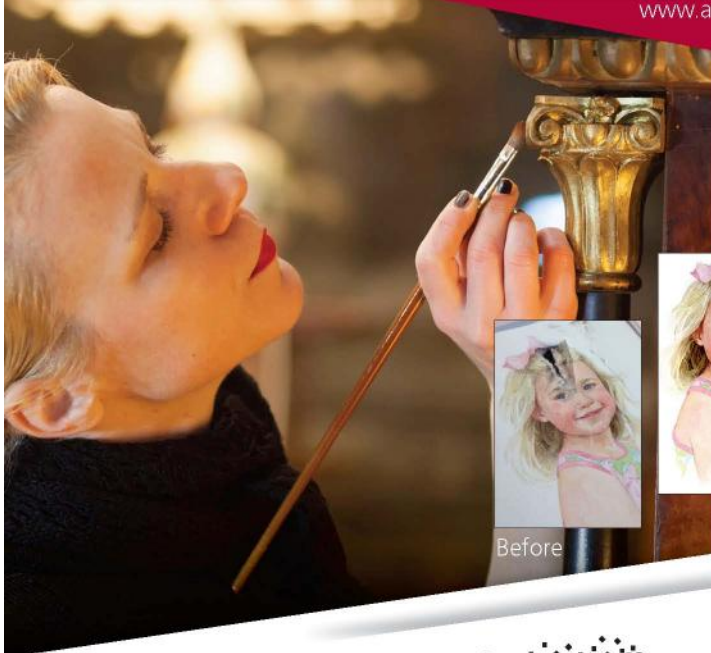


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memory, and reconnect the brain function that's supposed to intercept my more inappropriate comments, but my Kaiser Permanente Health Insurance policy doesn't cover elective upgrades.

This is all my wife's fault. It's not enough that for the past 35 years Barbara makes me eat healthy, exercise regularly, sleep soundly, avoid unhealthy habits, and submit to an annual physical. I feel great, my weight and height are proportionate, my blood tests all come back within the normal range, and my vital statistics are excellent. So, in January of 2017 she decides to increase my life insurance coverage.

What does MY doctor know? The life insurance company denies our application citing atrial fibrillation, a leaking prolapse valve, and a few other cardiac ailments. Now my newly appointed cardiologist says medication and (maybe) surgery will return my heart back to optimum health.

My primary care physician is embarrassed that he missed my compromised cardiac condition, so he delves deeper into every aspect of my physical well-being. The peripheral neuropathies that once seemed a minor irritant morph into major spinal surgery to rescue me from permanent paralysis. The neck surgery is suddenly more urgent than remedying my heart problems. Post-surgical complications ensue when I am stricken with a staph infection, and my esophagus is permanently damaged after surgeons climb down (and/or around) my throat during three separate operations.

My brain surgery WAS scheduled for August 24th, but I'm already scheduled on September 11th for five endoscopy and colonoscopy procedures (I'm really hoping that the gastroenterologist uses separate scopes for each procedure) to hopefully repair my esophagus enough that I can swallow almost normally. So, the neurologists are now waiting THEIR turn until September 24th.

In the 21 months since I was first diagnosed with heart problems my original cardiologist has taken an executive position at a hospital in Minnesota, and his partner here has assumed responsibility for my cardiac care. My new cardiologist jokes that I hit the health trifecta wherein only spinal and brain surgeries would take precedent over addressing concerns about my heart. Once I've recovered from this latest medical misadventure they can FINALLY figure out how to fix my heart enough that the life insurance company will agree to bump up my coverage to a higher level of security for Barbara.

Really, I feel FINE. I regularly swim, lift weights, play



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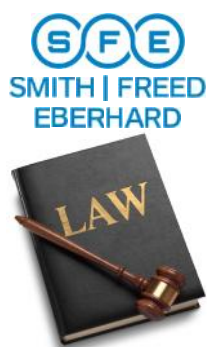
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racquetball, and chase around doing the things I've always done. I'm just not going to be at the October 19th PSAA Bowling Tournament, and you all will miss one more opportunity to laugh at how badly I perform at a sport that doesn't have to be interrupted while eating, drinking, and smoking... well, smoking inside is prohibited and they frown on you wearing their bowling shoes outside, so I guess you really can't smoke anymore while bowling. ❖

Note: As of our last report Roger was home and recovering from surgery. We wish him a quick path to recovery so he can resume his positions on both the PSAA and OCAA symposium committees. If you'd like to send Roger an email you can find his address on page 2.



Case Study

Determining Whether Communications Between Attorneys Constitute a Settlement Agreement

From the desk of Ashley Nagrodski:



Insurance policies are commonly structured to limit the insurer's duty to defend up to the point when policy limits are exhausted. But when there are multiple claimants and the insurer settles the largest claim for policy limits, can the insurer be subject to bad faith for refusing to defend from subsequent claimants because the policy is exhausted? Read on to find out.

Claims Pointer: In this case, arising out of a 16-vehicle traffic accident and ultimately resulting in more than one claim, the insurer declined to arrange a settlement where the insured would contribute \$1,000 towards a \$1 million settlement to avoid exhausting policy limits. The insured alleged bad faith after the insurer refused to defend subsequent claims on the basis that policy limits had been exhausted. The Washington Court of Appeals held that the insurer was subject to bad faith by placing its own interests above the insured's interests when the insurer settled the largest claim for policy limits and then denied a defense for subsequent claims. This case serves as a reminder of the importance of carefully structuring and negotiating settlement agreements involving more than one claim when policy limits are at play. Settlement negotiations should involve consideration of whether


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there could be future, subsequent claims before the policy limit is exhausted.

AP Transport v. Zurich Am. Ins. Co., No. 76479-9-1, Washington Court of Appeals Div. I (August 13, 2018) (unpublished)

On July 20, 2011, Joginder Singh dba AP Transport's ("Plaintiff") employee caused a 16-vehicle traffic accident while operating Plaintiff's semi-truck. The employee approached traffic at full speed and, at the last moment, swerved onto the adjacent lane, colliding with a logging truck. The impact caused both trucks, their trailers, and cargo to strike other vehicles, including a truck driven by Bryan Sykes ("Sykes") and a vehicle occupied by nine-year-old Nancy Beckwith ("Beckwith"), who died as a result of the accident. Beckwith's family filed a wrongful death suit against Plaintiff.

Plaintiff had a \$1 million policy from Zurich American Insurance Company ("Zurich"). Zurich retained attorney Ken Roessler ("Roessler") to defend Plaintiff. Roessler received notice that Sykes would be making a claim. Farmers Insurance Company ("Farmers") filed a \$25,150.32 subrogation suit. In order to settle Beckwith's claim, Roessler asked Zurich to allow Plaintiff to personally contribute \$1,000 toward the \$1 million settlement offer, so that Zurich would continue to provide Plaintiff with a defense for subsequent claims. Zurich declined the arrangement and instructed Roessler to tender the \$1 million policy to Beckwith. Beckwith accepted the settlement.

Shortly before the statute of limitations expired, Sykes sued Plaintiff. Plaintiff tendered the claim to Zurich and Zurich claimed it had no further duty to defend because policy limits had been exhausted. Plaintiff retained private counsel and ultimately settled with Sykes for \$250,000. Farmer's withdrew its subrogation suit. Plaintiff sued Zurich for numerous claims including bad faith. At trial, the jury found that Zurich failed to act in good faith. The trial court entered an award of \$291,000 on the verdict and awarded Plaintiff \$293,710.23 in attorney fees and costs. Zurich appealed.

Zurich took the position that the policy allowed it to settle any claim it deemed appropriate and provided an unambiguous contractual right to terminate defense after policy limits were exhausted. Zurich argued that upholding the bad faith claim would expand its obligations beyond what was required under the policy. Plaintiff argued that Zurich favored its own interest above his interests when it settled with Beckwith so that it "could refuse to defend him from other claimants and save on the costs of defense." According to Plaintiff, Zurich's ac-

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tions “unfairly left him exposed to substantial defense costs when Sykes sued him.”

The Washington Court of Appeals noted that while a policy may provide insurers with the right of control over settlement decisions, such discretion is not without limits. The court explained that an insurer “cannot put its financial interest before the interest of its insured; for an insurer to do so is to act in bad faith.” (emphasis added). An insurer “must give equal consideration” to the interests of its insured. (emphasis added). The Washington Court of Appeals explained that the duty of good faith is based on both “the contract and the fiduciary relationship,” and accordingly, Zurich could not justify its action based on the contract (insurance policy) alone. Even where the contract unambiguously permits an insurer’s actions, there could still be “a valid concern that the insurer has attempted to circumvent its duty to defend by making an early escape from the litigation.”

As to Plaintiff’s case, the court noted that at trial, Plaintiff’s expert testified that Zurich should have explored the idea of a “holdback” when negotiating Beckwith’s settlement. The expert opined that Zurich rejected having Plaintiff contribute \$1,000 to the settlement in order to “avoid having to create a reserve for defense costs for non-Beckwith claims.” The expert also testified that Zurich failed to adequately investigate other claims before settlement and exhausting policy limits, especially the value of Sykes’ claim in comparison to Beckwith’s claim. Finally, the expert opined it was reasonable to anticipate that Beckwith may have settled for below policy limits, as Beckwith would be aware of other potential claimants, and in fact settled below policy limits with the other driver. Based on the evidence from the trial court, the Washington Court of Appeals determined that the jury’s finding of bad faith was justified and upheld the trial court’s ruling. ❖

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

— View full opinion at: <https://www.courts.wa.gov/opinions/pdf/764799.pdf>

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Shortage of truckers has industry considering 18-year-olds

Reprinted from www.houstonchronicle.com

KANSAS CITY, Kan. (AP) — A nationwide shortage of truckers has some industry officials and national lawmakers supporting a plan to allow 18-year-olds to become long-haul drivers, while others in the industry say it's a bad idea that will decrease safety on the nation's road.

Apex CDL Institute in Kansas City, Kansas, trains truckers and would likely have more students if federal proposals to allow those under 21 to drive big rigs across the country. But institute director Jeffrey Steinberg thinks most 18-year-olds would make bad long-haulers.

"Sure, I'd make money" if the law was changed, Steinberg said. "But is it going to create more prob-

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lems than it would solve? In my opinion, yes. I don't think it's safe."

Bills before the U.S. House and the Senate — co-sponsored by U.S. Sen. Jerry Moran of Kansas — both propose that people under 21 who have commercial drivers' licenses be allowed to take their cargo across state lines. Federal law now requires truckers to wait until age 21 to get a CDL permitting them to drive big rigs across the country, The Kansas City Star reported.

Steinberg is not alone in his objection to dropping that minimum age to 18. The 160,000-member Owner Operator Independent Drivers Association, headquartered in Grain Valley, Missouri, has joined

more than a dozen traffic safety groups in writing protest letters to a congressional committee that will hear the idea. The federal proposals set training requirements for young CDL holders.

"Younger drivers both lack overall experience and are less safe behind the wheel than their older counterparts," their April 17 letter said. "In fact, CMV (commercial motor vehicle) drivers under the age of 19 are four times more likely to be involved in fatal crashes."

Republican-led proposals before the U.S. Committee On Transportation and Infrastructure would affect Kansas City, a central trucking hub, and other communities long state borders. Both Kansas and Missouri allow 18-year-olds to obtain CDLs, but only for travel within one state.

Some industry analysts with deliveries surging because of Amazon, eBay and Fed Ex, it's long past time to relax interstate restrictions.

"What isn't interstate commerce these days?" asked Satish Jindel of shipping logistics adviser SJ Consulting Group, Inc. "Anyone who makes a distinction between interstate and intrastate trucking is stuck in the past."

He said whether the minimum age is 18 or 21, the federal government needs to be consistent with the state CDL laws.

The American Trucking Associations expect the costs of delivered packages — in addition to groceries, furniture and most every consumer product — to climb as road shippers try to find 51,000 drivers to fill the empty cabs. That's up from a trucker shortage of 20,000 in 2013 and 36,500 in 2016. The ATA recently forecast a shortage of 100,000 drivers by 2021.

With the median age of a long-hauler at 49 and shipping demands ascending, the industry aims to recruit 90,000 new drivers a year for the next decade to keep cargo moving, said ATA vice president Sean McNally.

Norita Taylor of the independent drivers association said major carriers could fix the driver shortage by paying more but they don't want to do that.

"Their shareholders benefit from high turnover and low pay," said Taylor. "Dropping the minimum age to 18 is just another way to get cheap help."

The median annual wage in 2015 for a trucker working with a private fleet, such as a driver for Walmart, was \$73,000, according to ATA. ❖



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Fatal Car Crashes Fell 2% in 2017; 2018 Appears to Follow Trend

Reprinted from www.insurancejournal.com

Final U.S. highway fatality numbers for 2017 are down following two consecutive years of large increases. In addition, preliminary estimates for the first six months of 2018 appear to show that this downward trend continues into this year.

The U.S. Department of Transportation's National Highway Traffic Safety Administration reported that 37,133 people died in motor vehicle crashes in 2017, a decrease of almost 2 percent from 2016. The full 2017 Fatality Analysis Reporting System (FARS) data set reveals other numbers:

Pedestrian fatalities declined about 2 percent, the first decline since 2013;

For the second year in a row, more fatalities occurred in urban areas than rural areas;

Combination trucks involved in fatal crashes increased 5.8 percent;

Vehicle miles traveled (VMT) increased by 1.2 percent from 2016 to 2017; and

The fatality rate per 100 million VMT decreased by 2.5 percent, from 1.19 in 2016 to 1.16 in 2017.

"Dangerous actions such as speeding, distracted driving, and driving under the influence are still putting many Americans, their families and those they share the road with at risk," said NHTSA Deputy Administrator Heidi R. King. "Additionally, we must address the emerging trend of drug-impaired driving to ensure we are reducing traffic fatalities and keeping our roadways safe for the traveling public."

The 1.8-percent decrease from 2016 to 2017 compares to the 6.5-percent increase from 2015 to 2016 and the 8.4-percent increase from 2014 and 2015.

You might want to check out **A U.S. Privacy Law Could Be Good for Google, but Bad for You**. It can be found at

www.insurancejournal.com/news/national/2018/10/03/503269.htm

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IICF Week of Giving: How the Insurance Industry Gives Back

By Denise Hunter
 Reprinted from www.propertycasualty360.com.




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A woman opens her front door and is greeted by me and a Philadelphia firefighter.

“Do you have a smoke detector or carbon monoxide alarm?” I ask the woman. She shakes her head no. “Do you mind if we install one for free?” I ask.

You can almost hear her thinking, “What’s the catch?” But then we begin to talk some more. Slowly, the doubt melts away, replaced by gratitude.

As we walk up and down the street, there are similar conversations. In almost all cases, the people we meet are thankful someone cared enough to knock on their door and provide some help.

This is the type of community outreach that gives my work as an insurance professional a sense of meaning and purpose. And it’s why I circle my calendar every year in anticipation of the Insurance Industry Charitable Foundation’s (IICF) Week of Giving.

The numbers behind the Week of Giving are impressive. Last year more than 10,000 people provided nearly 29,000 hours of volunteer service in 173 cities. But that only tells a small part of the story.

For me, the real impact comes from the way everyone in our industry — interns, new hires, managers, all the way up to the CEO level — rolls up their sleeves and works side by side. Together, we’re working to improve the lives of people within our individual communities. The power of that teamwork is amazing.

Discovering (and Meeting) a City’s True Needs

I live in New Jersey, but I work in Philadelphia. I thought I knew everything there was to know about the City of Brotherly Love. But when I started volunteering during the Week of Giving six years ago, my bond with the city grew so much deeper.

Take the smoke alarm example. As insurance professionals, we all know such safety devices are im-

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portant. But in Philadelphia, 60% of the population lives in row homes. And in a row home, one small fire can be devastating because it can impact every other house in that row.

To meet this need, the IICF's Philadelphia chapter joined with the Insurance Society of Philadelphia and the Philadelphia Fire Department a few years ago to distribute and install smoke detectors. Each year, we walk block by block and hand them out until there aren't any smoke detectors left.

To shake the hand of a woman whose life you might've saved by installing a smoke detector is priceless. And we know this outreach saves lives, not just from a risk mitigation perspective or various other data points. The Philadelphia Fire Department has been able to share stories with our Week of Giving volunteers about people escaping fires in the homes where we've previously installed these detectors. It's one thing to know the work you do on a professional level has a positive impact on people's lives, but it's something else entirely to know that something you've put your back into with your time and effort has saved lives.

The Week of Giving offers everyone in our industry a chance to experience that feeling in countless little ways.

Some of my favorite volunteer projects apart from annual smoke detector work have involved helping children in need. During one of my first Week of Giving assignments, we helped an elementary school create a library (not every school has one in today's world of razor-thin education budgets). The insurance organization I was with at the time collected more than 1,000 books for every age group. About 15 of us set up the library. When we finished early, my fellow volunteers and I pitched in to help on smaller projects the school needed to complete. The enthusiasm of these insurance professionals to give back was inspiring.

I've also volunteered during the Week of Giving, and at other times of the year, to support children through an organization called Candles to Crayons Philadelphia. We assembled "KidPacks" — kits with a week's worth of clothing — that are distributed to children in need. It's a blessing to be able to work with your colleagues and make such a difference. It's also emotional. I broke down a couple of times when I reached into a bin, couldn't find a certain size coat, and realized that meant that child wouldn't get one.

Opportunities Abound

This year during the Week of Giving, my employer, Zurich North America, is involved in three large-



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scale volunteer projects with Habitat for Humanity, Ronald McDonald House and a Philadelphia non-profit named MANNA (Metropolitan Area Neighborhood Nutrition Alliance), which provides free meals and nutrition counseling.

Zurich North America is also teaming up with a local law firm, Post & Schell, to complete smaller projects, such as writing letters to troops or putting together kits with clothes and essentials for homeless people. No matter your role, your age or your title, the Week of Giving offers our industry's professionals multiple ways to get involved.

As a millennial, I share my generation's thirst for finding work that's both professionally and personally fulfilling. Our generation looks to our leaders to show us what's important, and the commitment of so many insurance organizations to support and promote the Week of Giving speaks volumes. When I see my manager working hand-in-hand with me during the Week of Giving, it shows me I'm working with people who truly care about making life better for others.

This type of outreach also impacts the way people view those of us working in insurance. We've always been known as the silent force helping people put parts of their lives back together after natural disasters and other tragedies. Now, people also see the impact we have on the cities and communities where we work. The Week of Giving continues to inspire me to volunteer, and I hope it inspires others within our communities to do the same. ❖

— The IICF Week of Giving runs from Oct. 13 to Oct. 20, 2018. If you haven't signed up to volunteer yet, there's still time. Visit the IICF Week of Giving website for more information:

weekofgiving.iicf.org

If you or your company participate in Week of Giving events, please share your story with us by sending a brief article about the project and your experience ~ we'll share it in the next issue.



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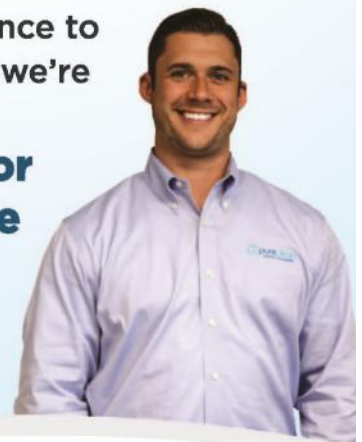
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