

Insurance Company Risk Management Tools

- Enterprise Risk Management (ERM)
- Model Audit Rule (MAR)
- Own Risk and Solvency Assessment (ORSA)

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Insurance and Reinsurance in a Low Carbon Economy
Is Climate Change the New Mass Tort for the Industry?

by Key Coleman, CPA, CFA, CPCU, ARe
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Defining Climate Change

We live in an era where the long-established use of fossil fuels to power our industries and economies is being questioned due to its purported impact on the Earth's climate. The burning of fossil fuels produces CO₂ and other so-called greenhouse gases (GHGs) that scientists have linked to global warming and other changes in the Earth's climate. Carbon extractors and heavy users of fossil fuels have come under heightened scrutiny in just the last year. Insurers and risk managers should pay close attention to developments related to climate change and make certain that they remain proactive in the way in which they address risk to their respective organizations.

The phrase "climate change" is extremely broad and includes global warming as well as changes in precipitation, storm patterns, etc. While the phrase itself does not imply change due to human activity, it is often used in such a context. It is important to discern exactly what part of this larger discourse is relevant to the insurance industry. Specifically, the industry should concern itself with changes in the Earth's climate that can lead to a loss in insurer assets, by way of an insured loss, an investment loss or a regulatory fine.

For some insured exposures, such as property and business income coverages, it is not necessary to determine causation to acknowledge a need for concern. If, for example, warming of the Atlantic Ocean causes one additional hurricane each season, the property policy responds, regardless of who is to blame. Liability policies, on the other hand, would require a determination of causation, and ultimately of liability on the part of the policyholder before the policy would respond.

Any determination of legal liability would imply that climate change is, in fact, the result of man-made activities. Yet our discussion here is non-scientific and does not purport to establish a link between human activity and actual change in the earth's climate. On the other hand, we do discuss the types of future claims that are likely to be alleged against the industry.

Is Climate Change the New Asbestos?

Similar to asbestos thirty years ago, climate change has enormous potential to develop into a mass tort. Although the scientific community seems to be lining up on the side of causation, liability has yet to be established. Liability for asbestos-associated illness, however, has been established since the early 1970s (in the US). Further, asbestos-associated illnesses continue to arise in our society and theories of exposure continue to develop. However, it is premature to assume that climate change, as a mass tort, will have a trajectory similar to asbestos.

Asbestos, more than any other mass tort, has defined the process of denial to acceptance, as follows:

- Reports of Harm
- Claims submitted
- Denial of coverage
- Science weighs in
- Adverse judgments
- Ultimate acceptance

It is, therefore, informative to take a brief look at how asbestos came to be recognized as the cause of occupational illness and how the insurance industry processed from denial to ultimate acceptance.

Miners of asbestos, as far back as First Century Rome, noticed that their workers became ill after prolonged exposure in the mines.¹ There was no recourse then for the incapacity and loss of life that resulted without the aid of a well-funded insurance industry.

In modern times, the appetite for asbestos in manufacturing had become robust by the late 1960s, but the risk management part of the insurance industry was in its infancy. In spite of a decade of industrial hygiene reports calling out the dangers of this material, widespread use of asbestos would continue for another decade, and limited use (in brake pads, etc.) would go on for years into the future.²

The first successful US asbestos claim, *Borel v. Fibreboard Paper Products* (in 1971), awarded damages to cover the occupational disease known as “asbestosis.”³

Policyholders who were manufacturers of products that required insulation or fire protection, would not give up asbestos without a fight. From their standpoint, asbestos was a “miracle” substance that insulated, but would not burn. Contractors continued blowing raw asbestos into Navy ships and every brake pad in virtually every automobile in the world was lined with the substance. New consumer products continued to go to market bringing asbestos “fire safety” into the home.

¹ <http://www.asbestos.com/asbestos/history/>

² <https://www.epa.gov/asbestos/us-federal-bans-asbestos#notbanned>

³ <https://tshaonline.org/handbook/online/articles/jrb01>

In the early 1970s, insurers of North American risks (including Lloyd's, London Companies, etc.) were in the business of selling insurance to industries that mined, refined, distributed and used asbestos in their daily operations. Assume you are corporate counsel at an insurer during this time period. You know that a single breakthrough law suit can portend a veritable tsunami of new law suits, adverse verdicts, settlements to avoid litigation and meritless claims that follow the real ones. You may not be able to change the industry, but you can influence what goes on in your company. What will you tell your underwriters? Your Actuaries? Your claims people? And what do you tell your accountants? Your Board of Directors? Your regulators?

The way in which insurers and their policyholders handle mass torts can potentially make things worse for their shareholders. Climate change, whether or not it makes it to the final stages of acceptance of liability, is a potentially enormous mass tort that demands the due attention now, and at each stage of its progression.

Where Do Insurers Have Exposure?

It is not hard to imagine the winners and losers from shifting weather patterns. If previously arid land in Africa suddenly becomes arable land due to increased annual rainfall, then local farmers may become winners as they enjoy bountiful harvests where none existed before. On the other hand, if the climate in Southern India suddenly becomes too hot to sustain centuries-old tea plantations, then the plantation owners could become losers to climate change. In addition, climate change has purportedly impacted El Nino, causing differing rain patterns that have led to unusual flooding in South America. Further, the hurricanes in the US seem to be changing their usual trajectory. Hurricane Sandy was the first major hurricane to hit the East Coast in many years. In each of these illustrations, the property damage liability, and liability for loss of income and loss of life could easily support billions of dollars in damages, provided causation and liability could be established in a court of competent jurisdiction.

In the Property & Casualty arena, there are a few broad categories that deserve attention:

1. Property and Business Income
2. General Liability
3. Investments
4. Directors & Officers
5. Regulatory Disclosure

1. Property and Business Income

The mere change in the Earth's climate may lead to increased exposure for insurers from the perils of wind, hail, flood or earthquake. Insurers are exposed to property and business income losses from these perils, without regard to whether the change is climate is determined to be man-made or not. Actuaries, underwriters, as well as the buyers of reinsurance should be tuned in to these changes.

2. General Liability

General liability policies covering fossil fuel extractors and heavy users, such as the utilities industry, could come into play provided that liability could be established in a court of law.

Causation would first need to be established, linking specific human activity of extracting and burning fossil fuel; then, liability by an insured entity that could establish an insurable loss.

Establishing causation, as stated earlier, is beyond the scope of this discussion. However, it will be incumbent upon insurance company management to stay abreast of current theories of causation in order to better understand their exposure.

The burning of fossil fuels in developed countries is pervasive, from utility plants and steel companies burning coal, to automobile owners burning gasoline. For the purposes of allocating liability, it would not be difficult to determine the largest extractors and users of fossil fuels in recent years.

In fact, there has been an attempt to establish such liability in the US courts. In 2011, the Supreme Court of Virginia was the first to make a determination in an insurance coverage matter. The Inupiat Eskimo Village of Kivalina, Alaska had filed a claim against numerous coal-burning utilities including AES Corporation for damages relating to climate change. The Village alleged that Arctic sea ice melting as a result of global warming was ruining the village. Steadfast Insurance Company denied coverage. The Virginia Supreme Court found that Steadfast had no duty to defend such a lawsuit.⁴

While this matter failed to establish liability on the part of the insurer, the mere potential of liability raises questions relating to accounting, claims, underwriting and investments, solvency and regulation. To the extent that liability might be established in the future, underwriting restrictions and/or policy exclusions on any new policies could serve to protect the insurer's capital.

3. Investments

Insurers and regulators, have only recently begun to scrutinize investment portfolios' correlation to the insurer's own insurance policies. Even if one were to assume that all insurers have a perfect handle on this correlation currently, the advent of climate change could change everything.

For example, if Hurricane Sandy, a force IV hurricane hitting the Northeastern United States, suddenly becomes the norm for future weather patterns rather than the exception, insurers with Northeastern real estate exposure, may realize too late that they own properties in the same sectors as they insure. If reinsurance rates rise, property insurance rates will rise and insurance availability could become constrained. If insurance becomes unaffordable,

⁴ Insurer Climate Risk Disclosure Survey Report & Scorecard: 2014 Findings & Recommendations, October 2014, Ceres Insurance Program, pp 13-4; and, Hunton & Williams, Client Alert, "Insurance Coverage for Climate Change After AES Corp. v. Steadfast Ins. Co.," October 2011

properties will be foreclosed, dealing an investment loss to both real estate and mortgage loan investors in that sector. Similar scenarios are easily imaginable impacting both liability policies as well as an insurer's investments in carbon producing companies.

In addition to the investment portfolio's correlation with an insurer's own policies, there is also the risk that the portfolios will lose value if carbon extractors and heavy users of fossil fuels become financially impaired due to litigation, a declining market for their products or inability to raise needed capital from major investment funds who eschew carbon investing altogether.

In response to this risk, in January 2016, California Insurance Commissioner, Dave Jones, asked insurers to:

1. "disclose annually their carbon-based investments including those in oil, gas and coal,"⁵ and,
2. "voluntarily divest from investments they hold in thermal coal," stating:

"I do not want to sit by and then discover in the near future that insurance companies' books are filled with stranded assets that have lost their value because of a shift away from the carbon-based economy, jeopardizing their financial stability and ability to meet their obligations, including paying claims to policyholders. Insurance companies divesting thermal coal assets will help reduce coal combustion, the single largest contributor to global climate change in the United States."⁶

4. Directors & Officers (D&O)

D&O insurance exposure has largely to do with the potential lack of disclosure from a Director or Officer of a policyholder to its stakeholders. For a public company, this is especially important due to SEC regulations.

Mandatory Public Company Disclosure - Liability for Failure to Disclose

Public company (policyholders) may now be required to disclose any potential liability for causing climate change, to the extent that it makes an investment in the company more risky. Directors and Officers of such companies (and their insurers) might ultimately be required to defend suits alleging inadequate disclosure.

In 2010, the US Securities and Exchange Commission (SEC) issued interpretive guidance relating to climate change disclosure for public companies, citing Item 503(c) of Regulation S-K that requires a registrant to disclose risk factors "that make an investment in the registrant

⁵ <http://www.insurance.ca.gov/0400-news/0100-press-releases/2016/statement010-16.cfm>

⁶ <http://www.insurance.ca.gov/0400-news/0100-press-releases/2016/statement010-16.cfm>

speculative or risky.”⁷ By the beginning of 2016, however, this interpretive guidance is seen to have had little impact on the quality of actual disclosure made by carbon intensive companies.⁸

In March 2016, the SEC forced Exxon Mobil to allow a climate change vote at its shareholder meeting in May.⁹ New York state Comptroller Thomas DiNapoli, who spearheaded the proposal, stated: "Investors need to know if Exxon Mobil is taking necessary steps to prepare for a lower carbon future, particularly now in the wake of the Paris agreement".¹⁰ In addition, the California Attorney General Kamala Harris has opened an investigation as to whether Exxon Mobil Corporation “lied to the public and its shareholders about the risk to its business from climate change – and whether such actions could amount to securities fraud and violations of environmental laws”.¹¹

Enhanced financial statement risk disclosure associated with climate change, at least for industries involved heavily in the extraction of fossil fuels and the emission of GHGs, will soon likely become a larger part of the Management Discussion & Analysis section of companies’ SEC filings. This enhanced disclosure may be impacted by the following factors:

1. The Clean Power Plan, which, if implemented, will create disclosure obligations for companies that mine and use coal, including utilities. In addition to disclosure, the plan would establish emission guidelines for fossil fuel-fired electric generating units.¹²
2. The Paris Agreement of December 12, 2015 may spawn enhanced disclosure by the SEC in that entire countries are asked to track their contributions to emissions reduction; but will more immediately impact 600 individual private-sector companies that have signed the “Paris Pledge for Action”.¹³

⁷ Securities and Exchange Commission, 17 CFR Parts 211, 231 and 241, Commission Guidance Regarding Disclosure to Climate Change

⁸ “Energy Sector Alert Series: Climate Change Disclosures in 2016”, Wilmer Hale, February 11, 2016

⁹ “Exxon Mobil must allow climate change vote: SEC”, Reuters, March 24, 2016

¹⁰ IBID.

¹¹ “California to investigate whether Exxon Mobil lied about climate change risks”, LA Times, January 20, 2016

¹² <https://www.epa.gov/cleanpowerplan/clean-power-plan-existing-power-plants>

¹³ “Energy Sector Alert Series: Climate Change Disclosures in 2016”, Wilmer Hale, February 11, 2016

5. Regulatory Disclosure for Insurance Companies

a. Recognizing a Liability

Insurance companies will need to recognize any appropriate liabilities that arise from climate change. However, in spite of enormous potential liability, there may be little (if any) liability that could be recognized now. From an accounting standpoint, a liability should be recognized under Generally Accepted Accounting Procedures (GAAP) when it is both probable and can be reasonably estimated.¹⁴

Insurer loss from property policies could occur merely by the increased frequency and severity of “metrological disturbances;” no causation link would need to be established, provided the perils (wind, flood, earthquake, etc.) were covered by the property policy in question. However, an insurer would only recognize case reserves on actual reported claims and Incurred But Not Reported (IBNR) reserves from events that have already occurred. In other words, there is no ability to reserve for future events, even if it is determined that they will be more likely to occur.

Insurers also have significant potential exposure to climate change from their liability policies. The triggering event for liability policies would not be the storm itself, but rather the act that ostensibly caused the storm, such as the combustion of fossil fuel. Although policyholders may have performed such activity, insurer liability is not yet probable, and any resulting insurer losses cannot be reasonably estimated. Thus, it is not possible at this point to record a liability on insurers’ books for potential losses expected from climate change. Quantification of total insured losses is impossible without knowing the extent of causation and liability that would be assessed.

Pre-Event Catastrophe reserving

Some insurers and regulators might feel safer if a certain amount of the \$700 billion in US policyholder surplus were reserved for the future exposure to climate change.¹⁵ In an effort to fully account for catastrophic losses that will likely occur in the future, there have been alternative proposals put forth that would address multiple types of catastrophes, including those that would potentially arise from climate change.

Pre-Event catastrophe reserves are an idea the National Association of Insurance Commissioners (NAIC) has been considering since the mid-1990s. Under the NAIC plan, the tax deferred proceeds from these reserves would be earmarked only for mega-catastrophes.¹⁶ In Japan, non-life companies are required to establish such a provision, which is partially tax

¹⁴ ASC 450

¹⁵ Insurance Information Institute, “2015 P/C Insurance Industry 2015 – First Half Results, October 21, 2015

¹⁶ “Reserving for Catastrophes”, Kay A. Clear, FCAS, MAAA and Judy Pol Boutchee, 2006, p. 29

deductible, depending on the line of business. Both Germany and the United Kingdom have similar requirements which are tax deductible.¹⁷

Among the benefits is that there is a smoothing of earnings and large catastrophes can be taken more in stride, thereby easing solvency issues both before and after an event. From a regulatory standpoint, the capital is at the company rather than at a foreign or alien reinsurer that may have untold exposure to a future catastrophe. One of the drawbacks, however, is that the more capital that is put away, the lower the capital efficiency ratios of the company. Companies reserving for severity may instead have a rash of frequency issues that require access to capital. Also, regulators see a general benefit to the spreading of risk through reinsurance agreements, and the reduction in such agreements overall would not benefit regulators' solvency efforts. As a result, catastrophe reserving is not under serious consideration for implementation under US GAAP or US Statutory Accounting Procedures (SAP).

b. State Disclosure Requirements for Insurance Companies

One of the most pressing issues for insurers at this juncture is the requirement for greater disclosure. Just as the SEC has required policyholders to disclose climate change exposure, so regulators are requiring the same of insurers.

Climate Change Survey

The National Association of Insurance Commissioners (NAIC) developed an insurance company survey on climate change that was adopted by insurance regulators in California, Connecticut, Minnesota, New York and Washington in 2013. Any company licensed in one of these states, with nationwide direct written premium over \$100 million, is required to respond to the survey.

The California Department of Insurance Climate Risk Disclosure Survey consisting of 8 questions (see Appendix 1 showing questions).¹⁸

Through June 2016, the latest California Climate Risk Disclosure Surveys reflect 2014 data (2015 surveys are due in July 2016). We analyzed the results of over 700 respondents and found that most insurers indicate that they are doing something proactive in response to most of the questions on the survey.

Questions are laid out in a Yes/No format with a requirement to explain or expand upon the answer. Any "yes" response indicates that the insurer is doing something proactive relative to the respective climate change question, and is often followed by a lengthy detailed discussion of the measures that the insurer is taking to address this particular issue. On the 2015 survey, only two questions on the survey were answered "no" by more than 50% of insurers; the remaining questions had well over 50% of insurers responding in the affirmative.

c. Enterprise Risk Management, Model Audit Rule and ORSA

¹⁷ "Reserving for Catastrophes", Kay A. Clear, FCAS, MAAA and Judy Pol Boutchee, 2006

¹⁸ <http://www.insurance.ca.gov/0400-news/0100-press-releases/2016/statement010-16.cfm>

Following the demise of Enron and WorldCom, Sarbanes-Oxley (SOX) requirements were imposed upon US Public companies, which included requiring that a “control environment” be established to ensure the company’s stability. Not long after, the NAIC imposed Enterprise Risk Management (or ERM) requirements on insurers. ERM requires that a holistic framework be established in order that an insurer can better understand and control its risk-taking activity across underwriting, investment and operational risks.¹⁹

In addition to this framework, the requirements of the Model Audit Rule (MAR) more closely mirror Sarbanes-Oxley requirements. Specifically, insurers with more than \$500 million in direct and assumed premiums must file a report addressing the company’s assessment of its internal controls over statutory financial reporting. Like SOX, the report includes management’s assertion as to the effectiveness of the controls; however, unlike SOX, the external auditors are not required to opine on the process.²⁰

Further, in January 2015, the Own Risk and Solvency Assessment (ORSA) went into effect for insurers above a certain premium threshold. ORSA requires insurers to complete a confidential ORSA summary report addressing risk as it relates to the company’s own solvency.²¹

Insurers should recognize that ERM, MAR and ORSA, each provide a tool which is already in place (at companies above the threshold levels), to address enterprise-wide risks they face with the uncertainties surrounding climate change. The ability to use these tools to assess, report and then re-assess climate change risks will be critical in the coming years. Where the risks are unclear, it will be incumbent upon insurers to seek help in identifying risks that could impact their entire organization.

¹⁹ http://www.naic.org/cipr_topics/topic_enterprise_risk_management.htm

²⁰ Society of Actuaries, *Small Talk*, Issue 34 June 2010, “The Model Audit Rule-It’s Not SOX, But it Has a Punch!”, by Lisa Cosentino and Philip Ferrari

²¹ http://www.naic.org/cipr_topics/topic_enterprise_risk_management.htm

Appendix 1

California Climate Risk Disclosure Survey Reporting Year 2014

Survey Questions

1. Does the company have a plan to assess, reduce or mitigate its emissions in its operations or organizations?

Yes - The company has a plan to assess and reduce or mitigate emissions in our operations or organizations - Please summarize.

No - The company does not have a plan to assess and reduce or mitigate emissions in our operations or organizations - Please describe why not.

2. Does the company have a climate change policy with respect to risk management and investment management? If yes, please summarize. If no, how do you account for climate change in your risk management?

Yes - The company has a climate change policy with respect to risk management and investment management - Please summarize.

No - The company does not have a climate change policy with respect to risk management and investment management - Please describe how you account for climate change in your risk management, or why you do not account for climate change in your risk management.

3. Describe your company's process for identifying climate change-related risks and assessing the degree that they could affect your business, including financial implications.

Yes - The company has a process for identifying climate change-related risks and assessing the degree that it could affect our business including financial implications - Please summarize.

No - The company does not have a process for identifying climate change-related risks and assessing the degree that it could affect our business including financial implications - Please describe why not.

4. Summarize the current or anticipated risks that climate change poses to your company. Explain the ways that these risks could affect your business. Include identification of the geographical areas affected by these risks.

Yes - The company has identified current or anticipated risks that climate change poses to our company - Explain the ways that these risks could affect your business - Include identification of the geographical areas affected by these risks.

No - The company has not identified current or anticipated risks that climate change will pose to our company - Please describe why not.

5. Has the company considered the impact of climate change on its investment portfolio? Has it altered its investment strategy in response to these considerations? If so, please summarize steps you have taken.

Yes - The company has considered the impact of climate change on its investment portfolio - Please summarize.

No - The company has not considered the impact of climate change on its investment portfolio - Please describe why not.

Yes - The company has altered its investment strategy in response to these considerations - Please summarize steps you have taken.

No - The company has not altered its investment strategy in response to these considerations - Please describe why not.

6. Summarize steps the company has taken to encourage policyholders to reduce the losses caused by climate change-influenced events.

Yes - The company has taken steps to encourage policyholders to reduce the losses caused by climate change-influenced events - Please summarize.

No - The company has not taken steps to encourage policyholders to reduce the losses caused by climate change-influenced events - Please describe why not.

7. Discuss steps, if any, the company has taken to engage key constituencies on the topic of climate change.

Yes - The company has taken steps to engage key constituencies on the topic of climate change - Please summarize.

No - The company has not taken steps to engage key constituencies on the topic of climate change - Please describe why not.

8. Describe actions the company is taking to manage the risks climate change poses to your business including, in general terms, the use of computer modeling.

Yes - The company is taking actions to manage the risks climate change poses to the business - Please summarize what actions the company is taking and in general terms the use if any of computer modeling.

No - The company is not taking actions to manage the risks climate change poses to the business - Please describe why.²²

²² <http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/ClimateSurvey/upload/GUIDELINES-CLIMATE-RISK-SURVEY-REPORTING-YEAR-2014.pdf>

Appendix 2

Important Websites

California Insurance Department – Climate Risk Survey Guidance:
<http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/ClimateSurvey/>

Carbon Disclosure Project (“CDP”): <http://www.cdproject.net/>.

Casualty Actuarial Society, American Academy of Actuaries, Canadian Institute of Actuaries and Society of Actuaries partnership to raise awareness on climate change:
<http://www.casact.org/press/index.cfm?fa=viewArticle&articleID=2128>

Ceres, Insurer Climate Risk Disclosure Survey: 2012 Findings and Recommendations:
<http://www.ceres.org/resources/reports/naic-report/view>.

Climate Disclosure Standards Board - <http://www.cdsb.net/>

Global Reporting Initiative (“GRI”): <https://www.globalreporting.org>.

Hecht, Sean. 2008. “Climate Change and the Transformation of Risk: Insurance Matters,” UCLA Law Review, Vol. 55: 1559-1620: <http://ssrn.com/abstract=1159853>

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https://www.hunton.com/files/News/7d354c22-37b5-413b-a4e8-ae49c456e272/Presentation/NewsAttachment/4a3cfd62-f5f6-459d-a37b-5295b3ab7eb8/insurance_lit_alert_vol_7_2011.pdf

Insurance Information Institute, Climate Change, Insurance Issues:
<http://www.iii.org/disasters/ClimateChange>.

Mills, E. 2012. "The Greening of Insurance," Science 338, 1424.”:
<http://evanmills.lbl.gov/pubs/pdf/science-2012-mills-1424-5.pdf>.

Lloyd’s: Catastrophe Modelling and Climate Change, 2014
<https://www.lloyds.com/~media/lloyds/reports/emerging%20risk%20reports/cc%20and%20modelling%20template%20v6.pdf>

NAIC Climate Change and Global Warming (EX) Task Force. 2008. “The Potential Impact of Climate Change on Insurance Regulation.”:
http://www.naic.org/store_pub_whitepapers.htm#climate_change.



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Carl has an insider's knowledge of the insurance industry, with more than 40 years of experience in its business, financial, and legal aspects. Chair of the firm's Corporate Insurance Department and Insurance Practice Group, he focuses his practice on:

- mergers
- acquisitions
- demutualizations and conversions
- public and private transactions
- licensure
- formation of companies
- holding companies
- due diligence investigations
- shareholder matters and stockholder meetings
- preparation of general commercial contracts
- insolvency
- business insurance
- reinsurance/excess lines
- reinsurance arbitrations
- offshore captives
- regulatory compliance
- restructuring and fidelity
- surety and bond issues
- corporate governance
- coverage

Carl's clients include insurance companies, insureds, and corporations in the U.S., Canada, Europe, and offshore, including Bermuda, the Caymans, Barbados, and the London market.

Carl's recent matters include:

- Representing Healthcare Providers Insurance Exchange (HPIX), a top-10 insurer of physician commercial medical professional liability in the Mid-Atlantic area, in an agreement to sell the rights, title, interests in and policies of the company to Medical Mutual Insurance Company of North Carolina.

Knowledgeable about health care reform, Carl also frequently helps clients sort through myriad issues and changes stemming from the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010.



Before Fox Rothschild

Carl was Chair of the Corporate Insurance Group at Buchanan Ingersoll. For 10 years prior to his private practice, he was a senior executive officer of the Harleysville Insurance Company, a large property casualty mutual insurance concern.

Beyond Fox Rothschild

Carl serves on the Board of Directors of numerous insurance and insurance-related companies. He is a frequent lecturer in the U.S., Europe, and Bermuda and regularly publishes articles in various legal publications.

Client Resources

Webinar: Dodd-Frank Fallout: What's in Store for the Investment Management Industry?

In this webinar, attorneys in Fox Rothschild's Securities Industry Group explore and explain how Dodd-Frank will affect investment advisers, hedge funds, money market funds, mutual funds, broker-dealers and other investment management industry participants.

Honors & Awards

- Rated AV® Preeminent™ by Martindale-Hubbell LexisNexis
- Included in a list of "Super Lawyers" by *Philadelphia Magazine* and *Law & Politics Magazine* (2006, 2007)
- Burton Award for Legal Achievement, recognizing excellence in legal writing (2001)

Practice Areas

- Corporate
- Insurance
- Construction
- Franchising, Licensing & Distribution
- Securities Industry
- Emerging Companies and Venture Capital
- International
- Life Sciences
- Law Firms and Attorneys
- Alternative Dispute Resolution
- Mergers and Acquisitions
- Captive Insurance

Bar Admissions

- Pennsylvania
- Maryland
- District of Columbia

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Third Circuit
- U.S. Court of Appeals, Fourth Circuit



Education

- University of Baltimore School of Law (J.D., 1973)
- Academy of International Law, The Hague (LL.M., 1972)
- Loyola College (B.A., 1970)

Memberships

- American Bar Association
- Defense Research Institute
- International Association of Defense Counsel (fidelity/surety and reinsurance), Audit Committee Chair

Board of Directors

- Loyola College (President's Executive Council)
- National Advisory Council Center for the Study of the Presidency
- University of Baltimore School of Law

Languages

- Italian

Publications

April 2015

Q&A With Fox Rothschild Partner Carl Anthony Maio

In the Zone

January 2015

FAQs as to Certificates of Insurance With Agreements of Sale and Leases

In the Zone

June 2014

Surety Bonds: A Basic Primer and the Insolvency Twist

Fidelity and Surety Committee Newsletter

April 29, 2013

FAQs On Franchise Development Insurance

Law 360

April 2013

What You Need To Know - FAQs on the Insurance Implications of Franchise Developments

Franchising, Licensing and Distribution Alert

November 8, 2012

Precautionary Insurance Best Practices for Those Impacted by Hurricane Sandy

August 2010

Dodd-Frank Wall Street Reform and Consumer Protection Act: Implications for Insurers, Reinsurers, Producers



and Brokers

Securities Industry Practice Alert

June 15, 2010

Alternative Dispute Resolution for Use in Arbitrations

International Association of Defense Counsel

May 2009

Insuring Against Employee Theft

Staying Well within the Law

April 6, 2009

Insuring Against Employee Theft

November 15, 2006

Inside The Minds: Winning Legal Strategies for Insurance Law

Aspatore Books

January 2005

All the Time in the World

Defense Counsel Journal

Events

Insurance and Reinsurance in a Low Carbon Economy

July 12, 2016 at 2:15pm – 3:15pm

Hosted by: The International Association of Defense Counsel (IADC)

Reinsurance 101 - Understanding the Basics

October 16, 2013

Hosted by: International Association of Defense Counsel

Dodd-Frank Fallout: What's in Store for the Investment Management Industry?

August 25, 2010 at 12:30pm

Webinar

Hosted by: Fox Rothschild LLP

The Arbitration Panel Process: Mystery and Secrecy Exposed

November 30, 2007

Hosted by: International Association of Defense Counsel 2007 Forum on Advanced Litigation Strategies

Forum on Advanced Litigation Strategies (FALS) Program

November 1, 2007

Hosted by: International Association of Defense Counsel (IADC)



News

May 11, 2016

US and Philadelphia Deal Markets Lag in Q1

ACG Philadelphia DealWire

March 31, 2016

Humanwell Healthcare Group and PuraCap Pharmaceutical LLC to Acquire Epic Pharma, LLC

PR Newswire

February 11, 2016

Fox Team Assists Major NJ Hospital in Becoming First Nonprofit Hospital To Form Onshore Captive in New Jersey

International Association of Defense Counsel

February 11, 2016

Fox Team Represents Healthcare Providers Insurance Exchange in Acquisition by Medical Mutual Insurance Co. of North Carolina

International Association of Defense Counsel

January 22, 2016

Nonprofit Hospital Approved to Own New Jersey's 21st Captive Insurer

A.M. Best News

January 15, 2016

Burlco Hospital Takes a First-In-The-State Step

Philadelphia Business Journal

January 14, 2016

Fox Team Spearheads Major NJ Hospital in Becoming First Nonprofit Hospital To Form Onshore Captive in New Jersey

January 14, 2016

Fox Rothschild Represents Healthcare Providers Insurance Exchange in Acquisition by Medical Mutual Insurance Co. of North Carolina

June 10, 2015

Fox Rothschild Represents Healthcare Providers Insurance Exchange in Acquisition by Medical Mutual Insurance Co. of North Carolina

November 13, 2014

Collecting Chairmen, Warrington Law Firm Home to Numerous VIPs

Bucks County Herald

November 2, 2010

Win the Fight Against Employee Theft

ChiefExecutive.net



Fox Rothschild LLP
ATTORNEYS AT LAW

August 22, 2009

The Beat Goes On

WNPV 1440 AM

April 23, 2008

Eliot Spitzer's legacy: Gone but not forgotten

Reactions Global Insurance Magazine

Marcelo Ramella, Deputy Director, Policy, Research and Risk Department, Bermuda Monetary Authority (BMA)

Marcelo is the Deputy Director of the Financial Stability Department of the Bermuda Monetary Authority (BMA), Bermuda's single financial sector regulator. Marcelo joined the BMA in 2005 and since then he has held positions in research, policy, international affairs and financial stability. Given the salience of Bermuda's international insurance and reinsurance sectors, he has dedicated a wealth of attention to following global developments in those markets, in particular issues relating to innovative practices within reinsurance. He is also involved in the work of the Financial Stability Board and the International Association of Insurance Supervisors (IAIS). At the IAIS he is the Chair of the Reinsurance Task Force, the Vice-chair of the Core Curriculum Task Force, and a Member of Macprudential Policy and Surveillance Working Group and the Index-based Insurance Working Group. Prior to joining the BMA Marcelo held research positions in the United Kingdom with the Home Office and the London School of Economics and Political Science (LSE).

Marcelo is National Public Accountant (Buenos Aires, Argentina). He has a Master in Business Administration from Bocconi University (Milan, Italy), an MSc in Organisational and Social Psychology from the London School of Economics and Political Science (LSE), and a PhD in Social Psychology from the LSE. In addition, since 2005, Marcelo has been a Visiting Fellow at the LSE.



BIOGRAPHY

CAROLE LYNN (“CL”) PROFERES

Managing Director



CURRENT RESPONSIBILITIES

Carole Lynn (“CL”) Proferes is a managing director in the Financial and Professional (FINPRO) Practice and is the FINPRO Practice leader for Marsh’s US Southeast Zone which includes Marsh’s 12 offices from Philadelphia to Florida. Based in Philadelphia, CL is responsible for the execution of all FINPRO growth, operational and human capital business strategies for this geography.

Carole Lynn remains a senior client advisor to many of the largest companies in the area. She has nearly 25 years of experience in leading the most complex placements for directors’ and officers’ liability (D&O), employment practices liability (EPL), and fiduciary liability. CL has deep technical expertise in public company D&O, understanding the risks and potential shareholder claims associated with alleged breach of fiduciary duty by directors and officers in the context of disclosure, financial reporting, merger and acquisition activity, and risks associated with environmental, cyber, and overall business strategy. With this understanding, CL is able to design and build state-of-the-art D&O programs that are tailored to each specific risk profile and her experience spans a variety of industries.

CL is an active member of the Marsh product team for the new wage and hour insurance solution released in early 2013, and is a national product champion for employment practices liability insurance. She is a member of the FINPRO Executive Leadership Team as well as the Southeast Zone Leadership Team. CL is very active in Marsh’s regional external and internal women networks as well as Marsh’s Young Professionals Employee Resource Group.

EXPERIENCE

Carole Lynn joined Marsh in September 1991. She served two years on the Marsh Global D&O Advisory Board and continues to be an active contributor to the group. She is a frequent public speaker on D&O, EPL and Wage and Hour and her speaking engagements have included the Insurance Society of Philadelphia, The National Association of Corporate Directors, The Financial Executive Institute, various RIMS Chapters and The CPCU Society.

Carole Lynn spent two years at a large New York investment banking firm where she worked on mergers, acquisitions, divestitures, and was instrumental in working on the Initial Public Offering of a large insurance company.

EDUCATION

- BA in finance and marketing (sum cum laude), University of Pennsylvania – The Wharton School

AFFILIATIONS

- Chartered Property Casualty Underwriter (CPCU)
- Licensed Broker of Property and Casualty in the State of Pennsylvania
- Approved Continuing Education Instructor in several states
- Active Volunteer for Penn Alumnae Interview Program

CV

Francis C. Brulenski, CPA, CFF

Office

1600 Market Street, 32nd Floor
Philadelphia, PA 19103
Phone: (215) 297-2100
francis.brulenski@marcumllp.com

Areas of Expertise

- Audit and Accounting
- Bankruptcy
- Business Advisory
- Forensic Accounting
- Litigation Support Services

Certifications

- CPA in states of PA & NJ
- CFF

Professional & Civic Affiliations

- AICPA
- PICPA
- AICPA Forensic and Valuation Services Division
- ACFE – Associate Member
- PICPA – Accounting & Auditing Procedures Committee (1996 – Present)
- Freedoms Foundation at Valley Forge – Board of Directors: Chairman, Secretary Audit/Finance Committee, Strategic Planning Committee (2006 – present)

Education

- B. S. Accounting – Bloomsburg State University (1983)

PARTNER – Philadelphia Office / Advisory Services

Frank Brulenski is a partner in Marcum's Philadelphia office and a member of the Firm's Advisory Services division. He came to Marcum in 2015 via the Firm's merger with Smart Devine, a leading full-service accounting firm in Philadelphia, where he was a managing director of the Forensic Accounting and Litigation Services Group.

Mr. Brulenski has over 30 years of diversified experience in the accounting field, including over 25 years in the forensic accounting arena providing investigative accounting and litigation support services to attorneys, trustees, receivers, businesses, nonprofits and governmental units. Litigation support services typically include varying degrees of independent investigation, financial analyses, witness interviews, analysis of damages, and preparation for and assistance at trial. Civil matters often require preparation of an expert report of findings and conclusions. Mr. Brulenski has been called upon to provide expert testimony concerning the results of investigations. Engagements include business loss claims, shareholder disputes, accounting malpractice, bankruptcy, trustee/receivership services, internal accounting controls, employee dishonesty matters, business valuation, income tax fraud and other financial frauds.

Mr. Brulenski's experience includes performing financial statement, consulting project, agreed-upon procedure and other advisory engagement services to business and nonprofit clients. He was responsible for development and management of the Smart Devine firm's system of quality control over a 20-year period. Financial statement engagement experience has ranged from a one-location audit to a complex international consolidation, included privately held business concerns to public companies, covered a broad range of industries, and included employee benefit plans.

Prior Experience:

- | | |
|-------------------------------------------------------------------|-----------|
| • Managing Director – Smart Devine, f/k/a Nihill & Riedley | 2010-2015 |
| • Shareholder – Nihill & Riedley, P.C. | 1995-2010 |
| • Manager – Nihill & Riedley, P.C. | 1990-1995 |
| • Supervising Senior Accountant – KPMG Peat Marwick | 1987-1990 |
| • Senior/Junior Accountant – Zelenkofske, Axelrod & Company, Ltd. | 1985-1987 |
| • Staff Accountant – General Motors Acceptance Corporation | 1984-1985 |

Articles, Seminars & Presentations

- *Deepening Insolvency – Damage Theory or What*, September 2006, National Litigation Consultants' Review
- *Fraud Detection is Not Just by the Numbers*, Summer 2004 Issue, Pennsylvania CPA Journal; November 2004, Accountingweb.com
- *Three Areas of Concern in Law Firm Accounting*, October 28, 1996, The Legal Intelligencer

MARCUM
ACCOUNTANTS & ADVISORS

CV

Francis C. Brulenski, CPA, CFF

- PICPA Accounting and Auditing Conference
Latest in Performance and Reporting for A&A Engagements – 2000
SSARS Engagement Performance and Potential Exposure
- Law Firm Seminar, Financial Statement Reporting – Understanding,
Presentation and Analysis – 1995
- U.S. Department of Labor – Office of Labor Racketeering
Financial Statement Engagements, Auditing Standards & Internal Controls –
1991

Testimony as an Expert Witness at Trial or by Deposition:

- James Rigas, Zito I, L.P., and Zito Media, L.P. v. Deloitte & Touche, LLP
(Re: Adelpia Communications Corporation Securities and Derivative Litigation)
U.S. District Court, S.D. NY – 2014 (Deposition)
- Official Committee of Unsecured Creditors of Bulk Petroleum Corporation v. SVA Certified Public Accountants, et al.
Circuit Court, Dane County, WI – 2013 (Deposition)
- Joshua Spivak and May Matthew Holdings, Inc. v. Benefits Technologies, LLC; Benefits Technologies Division IX, LLC; United Benefits Technologies, LP, and Dwight L. Pierce
U.S. District Court, E.D. PA – 2011 (Deposition)
- Estate of Marjorie E. Gordon
Court of Common Pleas, Berks County, PA; Orphans' Court Division – 2010
- Estate of Samuel Rappaport v. Richard Basciano and Lois Palmer, as Executors
Court of Common Pleas, Bucks County, PA; Orphans' Court Division – 2009
- NextCard, Inc., by and through its Chapter 7 Trustee, Alfred T. Giuliano v. Ernst & Young, LLP
AAA Arbitration – 2008
- Donna Soders, on behalf of herself and all others similarly situated v. General Motors Corporation
Court of Common Pleas, Lancaster County, PA – 2008 (Deposition)
- David H. Marion, as Receiver for Bentley Financial Services, Inc. v. TDI, Inc.; Southeastern Securities, Inc.; SFG Financial Services, Inc.; Peninsula Bank; Ted Benghiat; et al. (S.D Goldfine & Co. and Sanford Goldfine – Third-Party Defendants)
U.S. District Court, E.D. PA – 2006
- Robert W. Zuber v. Armo Close Rice & Company, P.C.
AAA Arbitration - 2004
- Mitchell Hardware Company v. Donna Von Houwen; Mark Von Houwen; Ostroff, Fair & Company, et al.
Mediation – 2000

CV

Francis C. Brulenski, CPA, CFF

Testimony as an Expert Witness at Trial or by Deposition:

- Dzwonar, et al. v. McDevitt, et al.
Superior Court of NJ – 2000
- Walnut Equipment Leasing Company, Inc. & Equipment Leasing Corporation of America, Debtors (Jointly)
U.S. Bankruptcy Court, E.D. PA – 1998; 1999
- Schwartz, Esquire, et al. v. Schmeltzer Master and Gorsky, P.C.
U.S. District Court, E.D. PA – 1996 (Deposition)

Other Expert Engagement Matters:

- Investigation of claims for financial damages on behalf of respondent. The nature of the matter involved evaluation of financial position and operating results of claimant's consolidated insurance business that had been acquired from respondent. Claimant alleged that following its purchase of the business, which focused on administration of vehicle service contracts and related products, certain amounts were due from respondent pursuant to terms of sale including profit sharing agreements. (2012) (Arbitration)
- Expert services, as financial advisor/accountant, on behalf of Chapter 7 Trustee. The nature of the matter includes investigation of Debtors' Ponzi scheme centered on the claimed buying and selling of overstock merchandise. Investors were solicited to fund each alleged deal that in turn, would yield a share of the claimed profit. (2011-in process)
(U.S.B.C., E.D. PA)
- Investigation of claims for lost profits on behalf of plaintiffs. The nature of the matter involved evaluation of an investment banker's services as contracted by plaintiffs. The issues centered on the investment banker's agreement to obtain and structure debt and/or equity financing to fund a business plan model involving defendants manufacturing and related franchising. (2005) (Civil - Court of Common Pleas, Philadelphia, PA)
- Investigation of claim for partner buyout pricing value on behalf of plaintiff. The nature of the matter involved analysis of a Fair Market Value calculation pursuant to a joint venture agreement for buyout of plaintiff's ownership interest. (2004) (Civil – U.S.D.C., E.D. PA)
- Investigation of complaints made in demand for arbitration on behalf of respondents and counterclaimants filed with the AAA. The nature of the matter involved the winding up of a law firm partnership and partner disputes in connection with related partnership agreement provisions and the accounting for operations before and after the end of the partnership. (2004)
- Investigation of accounting malpractice claim on behalf of trustee in a Chapter 7 adversary proceeding. The nature of the matter involved the evaluation of pre-petition professional accounting, compilation, and audit services performed by an accounting firm on behalf of the debtor entities and damages for lost business value. (2004) (U.S.B.C., E.D. PA)

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ACCOUNTANTS * ADVISORS

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Francis C. Brulenski, CPA, CFF

Other Expert Engagement Matters (Continued):

- Investigation of claim of negligence and fraud on behalf of defendant. The nature of the matter involved evaluation of professional consulting services performed by an accounting firm. Plaintiff claim was brought by a manufacturer/wholesaler supplier of the accounting firm's retail client due to damages of lost profits alleged in connection with trade credit extended. (2004) (Civil – U.S.D.C., E.D. PA)
- Expert services on behalf of the Securities and Exchange Commission in an administrative proceeding. The nature of the matter involved analysis of transactions and related losses regarding securities sold by a broker organization in an alleged fraudulent scheme. (2003)
- Investigation of claim for lost earnings on behalf of defendant due to alleged legal malpractice. The nature of the matter involved analysis of plaintiff expert's damage report. (2003) (Civil – Court of Common Pleas, Philadelphia, PA)
- Investigation of claim for business losses on behalf of defendant due to alleged legal malpractice. The nature of the matter involved analysis of plaintiff expert's damage report based upon a business valuation and claimed lost profits. (2003) (Civil – Court of Common Pleas, Philadelphia, PA)
- Investigation of accounting malpractice claim on behalf of plaintiff. The nature of the matter involved evaluation of the professional auditing and accounting services performed by an accounting firm in connection with a business merger. (2003) (Civil – Superior Court DE – New Castle)
- Investigation of accounting malpractice claim on behalf of defendant. The nature of the matter involved evaluation of professional accounting services performed during a period of alleged loss resulting from tax audit assessments against plaintiff. (2003) (Civil – Superior Court of NJ – Bergen)
- Investigation of accounting malpractice claim on behalf of defendant. The nature of the matter involved evaluation of professional accounting services performed during a period of alleged embezzlement in the context of a shareholder dispute. (2002) (Civil – U.S.D.C., E.D. PA)
- Investigation of accounting malpractice claim on behalf of plaintiff. The nature of the matter involved evaluation of professional accounting services performed during a period of losses from bookkeeper embezzlement. (2000) (Civil – Superior Court of NJ – Gloucester)
- Investigation and consulting expert services in connection with class action litigation on behalf of the class. The nature of the matter involved evaluation of accounting issues surrounding revenue recognition and advertising programs and assisting class counsel during depositions in pursuing claims against an automobile manufacturer. (1996) (Civil - U.S.D.C., W.D. – Erie, PA)
- Investigation of accounting malpractice on behalf of Unsecured Creditors Committee in a Chapter 11 proceeding. The nature of the matter involved evaluation of pre-petition professional audit services performed by an accounting firm on behalf of the Debtor entities. (1990) (U.S.B.C., E.D. PA)

CV

Key Coleman, CPA, CFA, CPCU, ARe



Office

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Philadelphia, PA 19103
Phone: (267) 670-7300
kcoleman@smartdevine.com

Areas of Expertise

Industry

- Insurance
- Reinsurance
- TPAs
- MGAs

Functional

- Forensic Accounting
- Dispute Analysis
- Damages

Certifications

- Certified Public Accountant (CPA)
- Chartered Financial Analyst (CFA)
- Chartered Property and Casualty Underwriter (CPCU)
- Associate in Reinsurance (ARe)

Education

- Emory University - MBA, Finance
- University of the South - BA, Economics
- UCLA Extension – Graduate level accounting program
- E. W. Blanch Reinsurance Course
- Lloyd's of London Brokers Course

Director

Forensic, Investigative and Dispute Services

Experience

Key has more than 25 years of experience providing business and financial analysis in the insurance and reinsurance industry, with a focus on forensics, disputes, damages and expert testimony. His clients include insurance companies, reinsurers, brokers, and attorneys.

Prior to joining Marcum, Key spent the bulk of his career in Chicago where he held high level positions at Grant Thornton LLP and LECG/Smart in their disputes practice. Prior to that, he was a Partner at PricewaterhouseCoopers LLP, where for more than 11 years he specialized in providing analysis in connection with insurance and reinsurance disputes. Key began his insurance career in industry where he worked more than 8 years in underwriting and management.

Key performs expert analysis relating to insurance and reinsurance damages. In addition, he performs compliance inspections of insurers' third-party service providers and other consulting services.

Representative engagements

Insurer, Agency, Broker, Policyholder Disputes

- Served as damages expert on behalf of the former Directors & Officers of an insolvent insurance company. Rebutted damages of over \$1.2 billion put forth by the receiver.
- Currently serving as an expert on behalf of one insurer seeking subrogation from another insurer in a matter involving a general liability policy.
- Served as expert on behalf of an insurer in a matter alleging damages from the termination of a group of agents.
- Served as an expert on behalf of a workers' compensation insurer, assessing suspected unremitted premium by the policyholder, a Professional Employment Organization (PEO).
- Rebutted alleged damages brought by a terminated MGA. Testified at arbitration.
- Expert in matter between an insurer and MGA. Testified at deposition and arbitration.
- Expert in suit alleging theft of a MGA's proprietary product by an insurer.
- Expert for a major on-line trading company in a dispute with an agency over internet sales
- Expert in "bad faith" case. Deposition testimony on punitive damages and their potential impact on the insurer's solvency.
- Expert on behalf of an insurer in a dispute involving force placed automobile insurance

Municipalities

- Expert for a large US municipality. Calculated damages from actions of brokers who allegedly by-passed procurement rules to sell excessive risk management services.
- Expert analysis to assist the court in understanding the potential economic impact of removing statutory caps on tort liability for municipalities.

Reinsurance Disputes

- Expert in litigation between Accident & Health reinsurer and a reinsurance broker, where the reinsurer alleged damages of over \$40 million. Testified at deposition.
- Rebuttal expert in a matter involving reinsurance on policies covering subprime automobile loans. Testified at deposition.

CV

Key Coleman, CPA, CFA, CPCU, ARe

Professional Affiliations

- American Institute of Certified Public Accountants
- Illinois CPA Society
- ARIAS – Member
- American Bar Association – Associate Member, Section of Litigation
- CFA Institute
- CFA Society of Chicago
- CPCU Society – Past President of North Alabama Chapter

Community Involvement

- USO of Illinois – Board Member and Audit Committee Member (2012-13)

- Expert in a workers' compensation reinsurance matter involving contingent commission. Testified on both damages and the underwriting process at deposition.
- Subject Matter Expert (SME) on finite reinsurance in the financial audit of 3 large insurers for a Big Four accounting firm.

Investigations and Inspections

- Inspect records of MGAs, TPAs and program managers for contractual compliance.
- Managed team to investigate the theft of more than \$200 million in insurance assets stolen from seven insurers. Traced assets to Swiss accounts to facilitate recovery.
- Investigated alleged self-dealing at a not-for-profit organization and its related-party MGA. Uncovered alleged fraudulent acts which resulted in dismissal of the CEO.

Insolvency and Runoff

- Consulted for a solvent runoff company, and other troubled companies including a mortgage insurer following the financial crisis. Analyzed potential costs of rehabilitation. Reported findings to department of insurance.

Presentations and publications

Key has written and spoken on many of the critical issues facing the insurance industry. He has been interviewed by the media and quoted in *Best's Review*, *Best's Newswires*, *Business Insurance*, *Dow Jones Newswires*, *Global Insurance Bulletin*, *Inside Mortgage Trends*, *National Underwriter*, *Re-actions*, *Risk and Insurance* and *Risk Management Magazine*. His articles have appeared in *AIRROC Matters*, *Business Insurance's Industry Focus*, the ABA's *Coverage* magazine, *Captive Insurance Company Reports*, *Risk Management Magazine*, *Risk and Insurance* and *Insurance Digest*.

Key's recent publications and presentations include:

- "The Polar Vortex", moderator for joint presentation with Reed Smith, Jan. 2014
- *Risk Management Magazine*, "The Effect of a Hardening Workers Compensation Market," Key Coleman and Fred Kohm, Nov. 1, 2013
- *AIRROC Matters*, "AIRROC's Dispute Resolution Process (DRP)," Spring 2013
- Sidley Austin LLP, expert in Mock Trial, Chicago, IL, March 2012
- Drinker Biddle & Reath LLP, panelist for litigation training, Princeton, NJ, May 2011
- Brokers & Reinsurance Markets Association (BRMA), expert witness in Mock Arbitration, Princeton, NJ, April 2011
- Foley Insurance Economic Summit, "Troubled Insurance Companies in the New Economy" speaker, Chicago, IL, October 2010
- Society of Insurance Financial Management (SIFM), "Preparing for and Responding to a Market Conduct Exam," presenter, New York, June 2010
- "Taking Stock" (insurance rate trends), *Risk and Insurance*, March 2010
- Pennsylvania Institute of Certified Public Accountants (PICPA), "Litigation Trends in Insurance and Reinsurance," November 2009
- Mealey's Insurance Insolvency Conference, panelist, Scottsdale, AZ, April 2008
- "Perspective: A solution without a problem?" *Business Insurance: Industry Focus*, May 2007

CV

Key Coleman, CPA, CFA, CPCU, ARe

Office

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Areas of Expertise

Industry

- Insurance
- Reinsurance
- MGAs

Functional

- Forensic Accounting
- Dispute Analysis
- Damages

Certifications

- Certified Public Accountant (CPA)
- Chartered Financial Analyst (CFA)
- Chartered Property and Casualty Underwriter (CPCU)
- Associate in Reinsurance (ARe)

Education

- Emory University - MBA, Finance
- University of the South - BA, Economics
- UCLA Extension – Graduate level accounting program
- E. W. Blanch Reinsurance Course
- Lloyd's of London Brokers Course

Professional Affiliations

- American Institute of Certified Public Accountants
- ARIAS
- CFA Institute
- CFA Society of Chicago
- CPCU Society
- Pennsylvania Institute of CPAs (PICPA)

Director

Key Coleman is a Director in the Litigation and Insurance Advisory Services practice of Marcum LLP in Philadelphia, PA. Mr. Coleman focuses on forensics, dispute analysis, damages and expert testimony in the insurance and reinsurance industry. His clients include insurance companies, reinsurers and insurance attorneys.

Experience

Mr. Coleman has over 25 years of experience providing business and financial analysis in the insurance and reinsurance industry. Formerly, Mr. Coleman held high level positions with Grant Thornton LLP and LECG/Smart in their disputes practice in Chicago. Prior to that, he was a Partner at PricewaterhouseCoopers LLP, where for more than 11 years he provided forensic and dispute analysis in matters involving insurers, reinsurers, brokers, Third Party Administrators (TPAs) and Managing General Agencies (MGAs). Mr. Coleman began his insurance career in industry where he worked more than eight years in reinsurance and direct underwriting management.

Mr. Coleman is often called upon to perform expert analysis relating to damages in insurance or reinsurance disputes. In addition, he performs inspections of MGAs, TPAs, ceding companies and insureds.

Professional qualifications

He is a licensed CPA in Pennsylvania and Illinois, and holds the Chartered Financial Analyst (CFA®), Chartered Property Casualty Underwriter (CPCU) and Associate in Reinsurance (ARe) designations.

Presentations and publications

Mr. Coleman has authored thought leadership articles on key issues facing the insurance industry. He has been interviewed by the media and has been quoted in *Best's Review*, *Business Insurance*, *Global Insurance Bulletin*, *Inside Mortgage Trends*, *National Underwriter*, *Re-actions*, *Risk and Insurance and Risk Management Magazine*. His articles have appeared in *AIRROC Matters*, *Business Insurance's Industry Focus*, *the ABA's Coverage magazine*, *Captive Insurance Company Reports*, *Risk Management Magazine*, *Risk and Insurance* and *Insurance Digest*.

Representative Engagements

Mr. Coleman's expert and consulting engagements include the following:

- Served recently as damages expert on behalf of the former Directors & Officers of an insolvent insurance company. Rebutted damages of over \$1.2 billion put forth by the receiver.
- Currently serving as an expert on behalf of one insurer seeking subrogation from another insurer in a matter involving a general liability policy.

CV

Key Coleman, CPA, CFA, CPCU, ARe

Community Involvement

- USO of Illinois – Board Member and Audit Committee Member (2012-2013)
- Currently providing expert analysis to assist an insurance agent as she seeks to recoup insurance commissions allegedly denied her over more than a ten year period.
- Currently working as damages expert on behalf of a franchisee who alleges mismanagement of multiple retail stores by his manager. Calculated damages including lost profits and lost future value of the stores.
- Currently working as expert on behalf of an agent facing various allegations from a state insurance department.
- Provided expert analysis to assist the court in determining damages in a matter involving the alleged mismanagement of a healthcare provider's pension plans.
- Served the interests of a Bermuda reinsurer by performing an inspection of its US Third Party Administrator (TPA), in order to scrutinize certain reported amounts. Identified numerous poorly documented charges for Nurse Case Management (NCM) fees that were ultimately credited back to the client.
- Served as expert on behalf of a commercial policyholder in which the policyholder alleged unfair claims settlement practices on an environmental claim. Issued expert report.
- Served as damages expert examining records of a workers' compensation insured to identify unremitted premium (if any), by the policyholder, a Professional Employment Organization (PEO). Issued expert report and testified at hearing.
- Performed commutation analysis for a reinsurer in a matter adverse to the ceding company, a self-insured plan. Analyzed the application of the Self-insured Retention (SIR) bringing clarity to the value of the claim. Performed present value analysis that enabled the reinsurer to understand and articulate the actual value and effect a commutation. Analysis led to a speedy resolution of a claim that had lingered for many years.
- On several occasions, worked on behalf of troubled insurers as they worked with state insurance departments to postpone rehabilitation.
- Served as expert in dispute relating to deductible reimbursements on high deductible policies covering a 10 year period. Issued report and testified at deposition.
- Served as expert on behalf of an insurer in a matter alleging damages stemming from the termination of agents following the company's withdrawal from a state.
- Served as expert on behalf of the risk management department of a large U. S. municipality. Insurance brokers allegedly provided improper incentives to a risk manager and were allowed to circumvent the

Key Coleman, CPA, CFA, CPCU, ARe

procurement process, selling excessive risk management services without competitive bidding. Issued expert report relating to damages.

- Provided expert analysis to assist the court in understanding the potential economic impact of the removal of statutory caps on tort liability for municipalities. Issued expert report.
- Served as damages expert in matter involving reinsurance on insurance policies covering subprime automobile loans. Provided rebuttal report addressing opposing expert's damages assessment. Testified at deposition.
- Rebutted damages expert on behalf of an insurer relating to claims brought by a terminated MGA. Testified at arbitration.
- Served as damages expert in a workers' compensation reinsurance matter involving contingent commission payable through a captive arrangement. Testified at deposition on both damages and the underwriting process.
- Served as damages expert in a matter between an insurer and a MGA. Provided damages analysis report and testimony at deposition and arbitration
- Served as rebuttal expert in suit alleging theft of a MGA's proprietary product by an insurance company.
- Served as an expert on behalf of major on-line trading company relating to a dispute with an insurance agency involving the sale of insurance on the Internet
- Served as damages expert in "bad faith" case, providing deposition testimony relating to punitive damages on behalf of an insurer. Analyzed impact of potential verdict on company solvency.
- Served as damages expert in litigation between Accident & Health reinsurer and reinsurance broker, where reinsurer alleged losses of over \$40 million. Analyzed broker representations on behalf of the reinsurer, provided damages report and deposition testimony.
- Served as expert on behalf of insurance carrier in dispute involving its force placed automobile insurance program
- Served as a consulting expert for an insurer alleging damages in excess of \$1 billion against a hedge fund.
- Performed "due diligence" on a regional medical malpractice insurance carrier.
- Performed due diligence on certain Managing General Underwriters (MGUs) on behalf of acquiring company
- Performed due diligence on underwriting unit being sold by major multi-line insurer.

Key Coleman, CPA, CFA, CPCU, ARe

- Developed damage analysis on behalf of workers compensation insurer in matter involving alleged improprieties by its MGA
- Investigated allegations of widespread self-dealing by management of non-profit organization and its sister company, a for-profit MGA. Uncovered an ERISA violation and other alleged fraudulent acts which resulted in the dismissal of the CEO
- Investigated alleged breach of trust agreement by MGU on behalf of life insurance carrier
- Performed MGA review on health insurer under extreme regulatory scrutiny
- Provided pre-litigation consulting and analysis for a ceding company when its reinsurer issued a demand letter for \$12.5 million pursuant to a non-standard treaty provision. Provided analysis that showed potential liability under various interpretations, thereby enabling client to achieve a satisfactory resolution.
- Performed the role of reinsurance Subject Matter Expert (SME) on behalf of a Big Four accounting firm with respect to the financial audits of 3 large insurance companies. Analyzed reinsurance treaties to identify finite reinsurance issues as part of the audit.
- Audited NYSE listed multi-line property & casualty insurance/reinsurance company following admitted financial "irregularities"
- Investigated allegations of wrongdoing at a reinsurance brokerage firm relating to World Trade Center exposure
- Performed analysis on behalf of a ceding company in an arbitration with its reinsurer regarding an alleged "finite" reinsurance contract
- Post-acquisition purchase price dispute. Managed team of consultants on behalf of expert in a \$100 million purchase price dispute involving a reinsurer.
- Post-acquisition purchase price dispute. Managed a team of consultants in support of the independent accountant chosen to arbitrate a \$50 million dispute between 2 of the top 10 life insurance companies.
- Post-acquisition purchase price dispute. Managed a team of consultants in support of the independent accountant chosen to arbitrate a \$45 million dispute between an insurer in run-off and its former fully-owned Third Party Administrator (TPA)
- Performed review of premium trust fund requirements for one of the top 5 largest insurance brokers. Performed site visits at various profit centers to determine compliance with various state regulations.
- Advised large workers compensation carrier on damages resulting from the acquisition of a specialty workers compensation carrier
- Analyzed damages from alleged self-dealing in the dissolution of a workers' compensation self-insured fund

Key Coleman, CPA, CFA, CPCU, ARe

- Performed analysis on behalf of big 4 accounting firm in defending allegations of accounting malpractice following the insolvency of its audit client, a \$1 billion life insurer
- Managed team that investigated the alleged theft of more than \$200 million in insurance assets on behalf of five state insurance departments
- Analyzed alleged lost profits in a contractual dispute between subsidiaries of two of non-standard automobile carriers
- Analysis of consumer insurance transactions ranging from debit life and health insurance to credit insurance policies sold in conjunction with lending transactions

Industry Experience:

In his 18 years as an expert and a consultant, Mr. Coleman has performed analysis in several different industries including healthcare, insurance, banking, salons, professional sports and waste disposal. Prior to his consulting career, Mr. Coleman worked for 11 years in the financial services industry, in both insurance and securities.

Insurance Industry

Mr. Coleman underwent extensive cross training when he joined Vesta Fire Insurance Corporation, working in claims, actuarial, accounting, marketing and underwriting departments. While at Vesta, Mr. Coleman:

- Underwrote and managed books of direct business including personal lines, vendor's single interest and mortgage protection. Had significant involvement with MGAs and other agencies.
- Underwrote assumed treaty and facultative property reinsurance, including both excess and pro rata contracts. Assisted in placing and tracking ceded reinsurance programs, covering both direct insurance as well as assumed reinsurance exposures.
- Structured fronting arrangements whereby the company would insure business underwritten by an MGA and would subsequently reinsure 100% of this book of business with a reinsurer.

Securities/Investment Industry

Mr. Coleman began his career with the firm of Merrill, Lynch, Pierce, Fenner & Smith as an investment broker. He completed the Merrill Lynch Account Executive Training Program in New York, NY, gaining a broad understanding of both capital markets and retail financial transactions. Mr. Coleman worked approximately 3 years in the securities industry marketing a range of financial products including equities, debt instruments and real estate limited partnerships.

Testimony at Hearings or Arbitration

- Guaranty Insurance Company v. Progressive Employer Services, et al., Broward County, Testimony at National Council on Compensation Insurance (NCCI) panel, October 17, 2012

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- Prosurance Group, Inc. v. ACE American Insurance Company, Arbitration, April 2009
- Creative Resources Group, Inc. v. PMA Capital Insurance Company (successor-in-interest to Caliber One Indemnity Company), American Arbitration Association, Case No. 14 Y 195 02418 03, January 2006

Deposition Testimony Experience

- Receiverships of Southern Family Insurance Company, et al v. William F. Poe, Sr. et al, Circuit Court of Leon County, Florida Case No.: 37-2006-CA-001060A, October 2015
- Zurich American Insurance Company, et al v. Commercial Policyholder, AAA Arbitration December 2012
- Certain Underwriters at Lloyd's v. American Bankers Insurance Group, Arbitration, January 2009
- Star Insurance Company v. United Commercial Insurance Agency, Inc., U. S. District Court, Eastern District of Michigan, Southern Division, Case No. 04-72289, July 2008
- Lea Ann Halstead v. Westfield Insurance Company, et al, Circuit Court of Boone County, West Virginia, Civil Action No. 04-C-218, September 2007
- Creative Resources Group, Inc. v. PMA Capital Insurance Company (successor-in-interest to Caliber One Indemnity Company), AAA Case No. 14 Y 195 02418 03
- RGA Reinsurance Company v. Aon Re Inc., U. S. District Court, Northern District of Illinois, Eastern Division, CV 02 C9397
- Kenneth Chance v. Liberty National Fire Insurance Company
- McDuffie v. Liberty National Life Insurance Company, et al; In the Circuit Court of Baldwin County, Alabama, CV95-002348

Expert in the Matters of:

- Granite State Insurance Company and New Hampshire Insurance Company, et al v. Lebanon Valley Insurance Company CCP Montgomery County, PA, Docket No.: 2009-44630
- Sharon Mercure v. Michael Kravitz, et al, Montgomery County, PA 2009-19688
- PSI v. MonArt Ventures, Inc. et al, AAA Arbitration
- Commissioner of the New Jersey Department of Banking and Insurance v. An Individual Life Insurance Agent
- Receiverships of Southern Family Insurance Company, et al v. William F. Poe, Sr. et al, Circuit Court of Leon County, Florida Case No.: 37-2006-CA-001060A

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- Stabilus, Inc. vs. Diamond State Insurance Company, et al, U.S. District Court for the Eastern District of Pennsylvania, Civil Action No. 2:12-CV03313-AB
- Zurich American Insurance Company, et al v. Commercial Policyholder, AAA Arbitration
- Dennis Beavers, et al. v. Farm Bureau Insurance Company of North Carolina, et al., Circuit Court of Blount County, Alabama, CV-2008-900088.00.
- School District of the City of Detroit v. Stephen Hill, et al., Circuit Court for the County of Wayne, Michigan Case No. 08-116305-CZ
- Guaranty Insurance Company v. Progressive Employer Services, et al., Broward County No. 08-51734 Div.07
- Prosurance Group, Inc. v. ACE American Insurance Company, Arbitration
- Certain Underwriters at Lloyd's v. American Bankers Insurance Group, Arbitration
- Neitzel v. Wisconsin County Mutual Insurance Corporation, Wisconsin Circuit Court, Case #2008 CV 100, Case Code: 30105
- Star Insurance Company v. United Commercial Insurance Agency, Inc., U. S. District Court, Eastern District of Michigan, Southern Division, Case No. 04-72289
- Lea Ann Halstead v. Westfield Insurance Company, et al, Circuit Court of Boone County, West Virginia, Civil Action No. 04-C-218
- Creative Resources Group, Inc. v. PMA Capital Insurance Company (successor-in-interest to Caliber One Indemnity Company), American Arbitration Association, Case No. 14 Y 195 02418 03
- RGA Reinsurance Company v. Aon Re Inc., U. S. District Court, Northern District of Illinois, Eastern Division, CV 02 C9397
- Elizabeth Benson v. Fairbanks Capital Corporation, et al. (Circuit Court, Broward County, Florida, Case 98-16628 (13)).
- Ellis J. Bagley, Jr. v. Lumbermens Mutual Insurance Company, et al. (U.S. District Court, Northern District of Illinois, Eastern Division), May 2002
- MacKensie-Jones Insurance Services v. On-Money Financial Services Corporation, AmeriTrade Corporation, et al. (U.S. District Court, Central District of California), December 2001
- Atlantic Coast Federal Credit Union v. State National Insurance Company and the Bankers Assurance Corporation, 1998

Presentations and Publications

- "The Polar Vortex", moderator for joint presentation with Reed Smith, Jan. 2014

Key Coleman, CPA, CFA, CPCU, ARe

- Risk Management Magazine, "The Effect of a Hardening Workers Compensation Market," Key Coleman and Fred Kohm, November 1, 2013
- AIRROC Matters, "AIRROC's Dispute Resolution Process (DRP)," Spring 2013 (www.airroc.org)
- AIRROC Matters, "The Great Debate," Fall 2012
- Sidley Austin LLP, Expert in Mock Trial, Chicago, IL, March 2012
- Drinker Biddle & Reath LLP, Panelist for litigation training on the use experts, Princeton, NJ, May 19, 2011
- Brokers & Reinsurance Markets Association (BRMA) Annual Committee Rendezvous, Expert Witness in Mock Arbitration, Princeton, NJ, April 12, 2011
- Foley Insurance Economic Summit, Speaker: "Troubled Insurance Companies in the New Economy: Are there Alternatives to Insolvency?" sponsored by Foley & Lardner LLP, Chicago, IL, October 27, 2010.
- Society of Insurance Financial Management (SIFM), Presenter: "Preparing for and Responding to a Market Conduct Exam," New York, NY, June 17, 2010
- Risk and Insurance, Article: "Taking Stock" (discussing D&O and E&O rates in the marketplace), March 2, 2010
- Pennsylvania Institute of Certified Public Accountants (PICPA), Presenter: "Litigation Trends in Insurance and Reinsurance" given jointly with Pepper Hamilton LLP, Malvern, PA, November 16, 2009
- Saul Ewing LLP, Presenter, jointly with The Schacht Group: "Helping Companies Prepare for the Second Round: What to do After an Unsatisfactory Market Conduct Exam (MCE)," Harrisburg, PA, July 30, 2009
- Foley Insurance Economic Summit, Speaker: "Insolvency and Bankruptcy 101 – A Refresher Course," Chicago, IL, April 2009
- Mealey's Insurance Insolvency Conference, Panelist: "The Situation Room - An Interactive Problem Solving Exercise," April 12, 2008
- Business Insurance: Industry Focus, Article: "Perspective: A solution without a problem?" (regarding "contingent" commission issue), May 21, 2007