



AICA BULLETIN

December 2011

Volume 10, Issue 4

DECEMBER DINNER MEETING

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Happy Holidays from the AICA

*In appreciation for all of our members, the AICA would like you to join us for an evening of **Casino Fun and Live Entertainment***

 *Featuring **DJ Greg James***

*Friday, December 16th
6 p.m.—10:30 p.m.*

*Gaming & Entertainment
6 p.m.—10 p.m.*

*Doubletree Hotel
320 N. 44th Street, Phoenix*

*Cost: \$25 worth of food for
the St. Mary's Food Bank*

RSVP at www.aicaonline.org

PRESIDENT'S MESSAGE



On this joyous occasion, I would like to wish all A I C A members, Board of Directors, committee persons, your families

and friends a very Merry Christmas during this very special holiday season. As we gather around our Christmas trees and or our decorated holiday home environments, let's take the time to give thanks for the blessings of the year just passed, to rejoice in each other, and enjoy the company of family and friends.

As we approach the very special day of the 25th, I'd like also to send a special greeting to all the men and women in uniform serving our country in lands far from home. You are all in our thoughts and prayers.

This special holiday season reminds us that the values we share do far outweigh whatever differences there are among all peoples. The twinkle of a child's eye, the joy of a grandparent's laughter, the love in the hearts of mothers and fathers for their children. All these blessings should be unwrapped on Christmas morning and lived throughout the year.

As we move toward the special day or days of unwrapping and all of the joys surrounding access issues to the mall, we also remember those who provide a significant financial foundation to the AICA, the contractor

members. In appreciation of these members is the Association's December 16th Christmas party where prizes, via your Casino night winnings, are made available by way of raffle drawing, to all attendees and only for an admission of \$25 worth of food for the St. Mary's Food Bank. Yes the AICA "gives back" to the community at large every month, especially in December. A showing of gratitude that we can and we do.

Speaking of gratitude, every person who is an AICA member deserves a great big huge thank you for all of your support throughout this last year just by being a member at the very least. Our family of insurance business entities depends on each other to render aid and assistance to all those claimants in need. We are the good guys, demonstrated and exemplified by the persons and personalities that attend dinner meetings. Hip Hip Hooray to all!!

From the Board and your President, come on down and celebrate with us on December 16th!

May the spirit of the season be with you today and throughout the new year. From your President to you and your family, Merry Christmas, Happy New Year and God Bless you all.

Capt. Bruce McNeil, AIC

President
AICA

To be past president on the 3rd Thursday of January when the new board is seated!!!! :))

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AICA GIVES BACK

Since the economy began its historic tumble in the summer of 2008, hunger in our community has nearly doubled – putting an incredible strain on not only St. Mary's Food Bank Alliance, but food banks and pantries everywhere.

St. Mary's has been able to meet the need, a feat possible only because of the support the food bank has received from the generous people of Arizona Beginning this summer, donations to the food bank began declining while need in the community remains at record levels. With the holidays now upon us, this trend is of particular concern.

We ask that during this season, you remember those who continue to suffer the fallout from this recession and need assistance from their neighbors. St. Mary's Food Bank Alliance can only provide these services, and feed the one in four children now struggling in our state, with your help.

Time and again, this community has stepped forward to help those struggling with the basic necessities of life. With one dollar, the food bank can distribute enough food to provide seven meals. Now more than

ever, those dollars are so important to so many who seek to rebuild lives, regain footing and move forward with confidence and hope.

That is why in December the AICA asks that you make a donation of non-perishable food items equivalent to \$25.00 and bring with you to the AICA annual Christmas party.

It is our way of saying we will see to it that the holidays are a little bit brighter for families in our community.

THANK YOU.





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AICA ELECTION RESULTS

Congratulations to the newly elected 2012 AICA Officers & Board Members! Thank you to all those who came to the November meeting to vote.

PRESIDENT:	Robin Werth, AIC, Berkley Risk Administrators
VICE PRESIDENT:	Nadine Mar, CCLA, AIC, ARM, EMC Insurance Company
SECRETARY:	Paul C. Kottler, AIC, Kottler Capital Partners
TREASURER:	Miguel Martinez, Auto Owners Insurance Company
MEMBERS AT LARGE:	Bethany Powell, American Environmental Group
	Karl Epps, EnCe
	Jill Marie Malley, Desert Sky Restoration



NOVEMBER DOOR PRIZES

We offer our sincerest gratitude to the following companies and representatives who donated door prizes for our November meeting:

- Damage Control - Nicole Nelson
- Day & Night - Kim White
- Desert Dry - Lisa Hastey
- FRSTeam - Andrea Hesketh
- Desert Sky Restoration - Jill Malley
- Horizon Cleaners - Terri Yakich
- ServiceMaster All Care -Mike Benner
- SOS Restoration -Nanette Varela
- Sun Country DKI -Rita Megui

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EXPERT'S CORNER—CONFUSION OVER CONSTRUCTION DEFECT LIABILITY SPAWNS LEGAL BATTLES

Four states recently have passed statutes defining construction defect claims as occurrences, but commercial general liability policyholders continue to be frustrated by coverage gaps for faulty work construction.

Although incongruous court decisions over whether construction defect claims are covered under CGL policies continue to drive uncertainty in coverage and increase litigation costs, a unique trend among states may take the battle out of the courts, experts say.

Contractors, subcontractors, land owners or developers can be named in a construction defect suit, and the issue of coverage arises when one of those entities turns to their CGL policy for coverage against those claims, said Julian Ehrlich, Senior VP of claims for Aon Risk Solutions' construction services group in New York.

"One of the interesting and compelling aspects of the issue of coverage for defective construction is that jurisdictions differ, so policyholders don't know what they're going to get," Mr. Ehrlich said.

At the root of the issue is whether construction defects, defined as damages resulting from shoddy or faulty work, constitute an occurrence triggering the policy, experts say.

"In context of construction defect, the term 'occurrence' is ambiguous," Mr. Ehrlich said. "The definition of terms frames the debate, and here we have undefined terms."

The policy language within the CGL form has been interpreted differently by courts deciding construction defect claims, causing disparities in coverage for policyholders, experts say.

The CGL form was designed to apply to various risks across many different industries, said Frank Armstrong,

Tampa, Fla.-based Senior VP and National Director of construction claims for Willis North America.

"Certain pieces of it don't fit well, at least according to some courts in the country, with coverage for construction defect risks," he said.

Typically, once a loss occurs, the CGL insuring agreement must be satisfied, which generally means there must be property damage arising from an occurrence as defined by the policy, Mr. Armstrong said. Once the insuring agreement is satisfied, different policy provisions will be applied to determine the scope of coverage.

"The insuring agreement and other policy provisions have been interpreted by courts around the country in different ways," he said.

The word "occurrence" is "where the problem starts," he said, noting that two courts in different states interpret the exact same word and definition differently with respect to construction defect.

Further exacerbating the matter is the cost of litigation for policyholders, experts say.

F. Warren Jacoby, Philadelphia-based vice chairman at Cozen O'Connor and head of the law firm's construction law and litigation practice, said "the biggest challenge right now is the cost of litigation."

"People are just tiring of the judicial process," he said. "In the court systems, you get bogged down with e-discovery and all sorts of issues, so the litigation process has become very expensive for most people."

Construction defect litigation is expensive and lengthy, as the construction industry often is forced to litigate



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EXPERT'S CORNER CONT'D

insurance coverage issues while at the same time defending against the construction defect claim in the underlying case, said Jeffrey J. Vita, a partner at law firm Saxe Doernberger & Vita P.C. in Hamden, Conn.

Insurance solutions for construction defect claims are expensive and somewhat limited, experts say.

"There's a least one major carrier out there that is offering an endorsement that, for example, will provide coverage for construction defect under the law of the most favorable state that the policyholder does business in," Mr. Ehrlich said.

Construction defect endorsements are common, with only a few major construction markets not offering the coverage, said Paul Primavera, senior vp and practice leader of Lockton Cos. L.L.C.'s national claim advisory group in Washington.

The endorsement provides the certainty and consistency of coverage for construction defects so it doesn't change depending upon the jurisdiction, Mr. Primavera said.

"The one aspect of it that is somewhat inconsistent is

the pricing, or lack thereof," he said. "The cost associated with that will depend on the appetite of the individual insurer with that particular policyholder, and also depends on the size of the policyholder if they take a retention."

While courts are trending to side with policyholders that a construction defect claim constitutes an occurrence under their CGL policies, four states have passed legislative statutes to address the issue, experts say.

Arkansas, Colorado, Hawaii and South Carolina have laws that legislate that construction defect claims constitute occurrences.

The disparity in court decisions has led the construction industry to seek relief through legislative efforts, said Willis' Mr. Armstrong, who noted that the legislation initiated and ultimately passed was "unique," in that it essentially creates statutory law on how certain CGL terms are to be applied for construction defect losses.

"State legislatures...have recognized this battleground, and they have taken it out of the courts' hands, and they've passed legislation that in various forms says faulty work does constitute an accident under a CGL



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EXPERT'S CORNER CONT'D

policy," said Mr. Vita.

"They have done it specifically for these construction claims," he said.

Colorado was the first state to pass a law, H.B. 10-1394, in May 2010. The Legislature addressed the conflicting expectations of insureds because of the complex and lengthy endorsements and exclusions facing construction professionals, according to the bill.

"In interpreting a liability insurance policy issued to a construction professional, a court shall presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, is an accident unless the property damage is intended and expected by the insured," the statute reads.

"The legislatures have stepped in to try to get some relief for the construction industry, which is so vital to so many of the states' economies," Mr. Vita said.

"You have to read the specific language of each of those four statutes because they vary significantly in what they say. But the general intent is to take this issue out of the courts' hands," he said.

Mr. Ehrlich of Aon said the effects of the legislation may create more uncertainty as states and courts continue to define CGL policy language with respect to construction defect claims.

"It remains to be seen whether that trend will spread, whether more legislatures will address that issue and attempt to resolve it by statute," he said.

"These four states have stepped up. I expect that you're going to see more states pass similar legislation in the coming year or two," Mr. Vita said.

By: [Mike Tsikoudakis](#)

Business Insurance
November 13, 2011 06 a.m.

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