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Thanks for reading this edition of ClaimsBytes®. Please look
for our next edition for more important claims news.

Sincerely,
The Graham Company Claims Services Department

Keep an eye out for details on *The Graham Company Claims Services Department Spring 2011 Claims Workshop*.



Graham University™
The Graham Company

EMERGENCY CLAIMS BYTES

The Graham Company recognizes that emergencies don't just happen during business hours. The Graham Company Claims Services Department stands ready to assist our clients 24 hours a day, 365 days a year. In the event of an emergency claim, please call The Graham Company at **(215) 567-6300**. If you are calling after hours, you will receive instructions on how to reach The Graham Company's On-Call Emergency Claims Coordinator.

The Graham Company will help you record the vital information concerning the loss and obtain the appropriate experts to help you. These experts could include an insurance adjuster, an attorney, cause and origin expert, restoration specialist, media consultant, and depending upon the severity of the loss, a public adjuster. These experts are important in documenting and controlling the evidence involved in the loss. Subrogation recovery may hinge upon the investigation and immediate attention is critical.

This is a service we hope you will never have to use, but rest assured, we are here to help.

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Claims Success Bytes

The Graham Company Claims Success Stories

The Graham Company's Claims Services Department consists of top notch insurance claims professionals dedicated to serving our clients' claims management needs. *Our Mission is To Provide our Clients With a Superior Level of Technical and Professional Claims Services Which Achieve the Greatest Impact on Insurance Costs.* We achieve our mission by: maximizing coverage, aggressive claims handling, minimizing reserves, and effective communication. The results of these efforts are known as our Claims Success Stories.

We have tracked these success stories and the dollar impact of where we favorably impacted claims settlements and maximized the coverage we placed through aggressive claims handling. ***Over the past ten years, we have been successful in recovering over \$40,000,000 for our clients where the insurance company initially said "No"!***

We have recovered losses ranging from a few thousand dollars to over \$2,000,000 for a single claim. In one claim, an insured was presented with thirteen separate third party engine failure claims. We convinced the carrier to treat all of the claims as a single occurrence since they all resulted from the same general harmful conditions (one particular engine part), preventing the insured from paying thirteen deductibles. In another claim, water from a storm sewer infiltrated the insured's campus causing damage to product, facilities, machinery and temporarily ceased operations. The carrier attempted to apply the flood deductible to the loss, however, we demonstrated to the carrier that the loss was due to the back up of a storm sewer, not a flood, and the insured's standard per occurrence property deductible, not the much higher flood deductible, was ultimately applied to the loss. This saved the client over \$200,000.

Our aggressive claims handling and client advocacy is what sets us apart and allows us to achieve the greatest impact on our clients' insurance costs every day.

Should you have any questions regarding our claim success stories, please do not hesitate to contact the undersigned or your Graham Company Consultant.

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Legal Bytes

Litigation Hold: Preservation of Electronic Documents and Electronically Stored Data

Have you been notified of a lawsuit or do you foresee litigation on the horizon? If so, you should understand the basics of the “litigation hold” and how it will impact the manner in which your company manages its documents and electronically stored data. A “litigation hold” is a suspension of a company’s document destruction and retention policies for those documents that may be relevant to a pending or potential lawsuit. The purpose of a litigation hold is to preserve documents that may be relevant to the issues in a lawsuit.

While the need to preserve evidence may seem obvious, the effort to comply with discovery obligations in litigation is frequently underestimated. The growing trend toward electronic record keeping, and the discovery of that electronically stored data, has created new administrative challenges for companies entering the fray of litigation. Since attorneys know that an electronic database is a potential treasure trove of information, access to a company’s electronically stored data is often targeted by the opposition. The quest for this coveted information sometimes turns into a discovery battleground, governed by an evolving mix of procedural rules that the courts have struggled to harmonize with rapidly advancing technology. A company’s failure to adhere to the rules can be severe, and in some instances, impact the outcome of the litigation.

What triggers the litigation hold?

Many parties do not become aware of their involvement in a lawsuit until after they have been served with a complaint or a subpoena. In those instances, the obligation to preserve evidence arises once a party has reason to believe that documents in its possession or control may be relevant to the litigation. The duty to preserve evidence can begin earlier, however, if one has reason to believe that litigation is foreseeable. In either situation, employees should immediately consult your company’s attorney or risk manager for guidance as to what documentation must be preserved.

Ordinarily, your company’s attorney will notify you of a lawsuit or a potential claim. This can appear in the form of a Litigation Hold Notice that identifies the need to preserve information that may be relevant to the litigation. Since those not directly involved in a lawsuit may know little about the dispute, the directive should state the nature of the claim and define potentially relevant information so that key employees and IT department personnel understand what documents must be preserved. The notice should also advise the recipients to maintain the integrity of all relevant documents (hard copy and electronic, including those contained on archives, back-ups, local hard drives and laptops) and suspend any policy that would result in the destruction of documents. This would include stopping any routine or automatic deletion of electronically stored data, whether maintained by the company or a third party vendor. Finally, the notice should designate a contact person that employees can call for help and explain what steps each recipient should take to implement the plan.

What documents must be preserved?

The rules governing the discovery of information are very broad. The Federal Rules of Civil Procedure permit the discovery of information that “appears reasonably calculated to lead to the discovery of admissible evidence.” F.R.C.P. 26(b).

Given these broad parameters, a party is not simply obligated to preserve those documents that are relevant to the issues in the litigation. A party or potential litigant must also figure out what information may be requested during discovery or what information may lead to the discovery of relevant evidence.

As companies shift to computer based documentation and storage systems, hard copy documents are increasingly replaced by electronic documents. Given this trend, it is not surprising that electronically stored data often becomes the target of discovery in litigation. This can be problematic since electronic documents have different characteristics than their hard copy predecessors.

Due to the ease of transmission, electronic documents can create a permanent record of communication that may not have been recorded in the past. E-mails are often exchanged instead of phone calls, which can result in the documentation of careless commentary or the widespread dissemination of information to a larger group of individuals, some of whom may be accidental recipients. The evolution of an electronic document can also be discovered through an examination of the file Metadata. By looking behind the virtual record, edits and other source information about the document or communication can be revealed. As a result, electronic documents can have more evidentiary value than paper documents and may be a potential source of more detailed information.

What happens if you fail to preserve documents?

Depending on the seriousness of the infraction, the court can style a remedy to “fix” the problem caused by the loss or delay in the production of documentation. While monetary sanctions may be awarded in the form of attorneys’ fees or the costs to retrieve lost or deleted information, other penalties can be more severe. For example, if documents are not made available, a party could be defaulted or the jury could be given an adverse inference instruction that allows them to assume that the content of that document was not favorable to the party that destroyed or lost the document. Besides scoring evidentiary points for your opponent, this type of sanction can have an unintended, yet devastating impact on the credibility of your company at trial.

How can you avoid mishaps?

Every company should establish a comprehensive records retention policy so that its records can be properly managed and maintained. The policy should articulate what information is to be maintained and why, identify those responsible for its implementation, and establish schedules for destroying or archiving information that is no longer in use. Once a records retention policy is in place, a litigation plan can be developed to control the destruction of the company’s information. As with most policies, it is important that the program be carried out with consistency and that employees be educated regarding how documents should be created, maintained and destroyed.

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Workers' Compensation Bytes

Building Relationships with Your Medical Providers

As part of your Workers' Compensation Program, you most likely worked with your insurance company to establish Panels of Preferred Medical Providers for your employees to access in the event of a work related accident or illness. If you are like most, you created your Panel by choosing doctors and medical facility providers that are part of a network of providers maintained or accessed by your insurance company. **Over the past 20 years, the medical expense component of total claim cost has increased from 46% to 59%**¹. This significant increase has highlighted the need to control medical costs and has led insurance companies to strengthen their provider networks. No doubt you have seen that the relationship between your insurance company and its network of providers helps to control the cost of the medical care provided to your injured employees and can help to reduce the lost time, and ultimately the total cost of your Workers' Compensation program.

In some states, such as Pennsylvania for example, an employer who establishes and posts a panel of providers has the ability to direct an injured employee to a limited number of medical providers for the first 90 days of the claim². In those states, having a strong medical panel is often critical to the course of a claim and can result in significant savings on the medical and indemnity components of the claim.

In states where an employer's ability to control and direct an injured employee's care is more limited, you can still benefit from taking the time to develop a list of trusted providers to give sound care and guidance to your injured employees. In many instances, when an employee is injured, they may look to you for suggestions on where to go to seek care. If you can recommend quality providers located near your facility that have a relationship with your insurance company, you can help your employees receive the care they need while controlling the cost of that care.

The relationship between your insurance company and your medical providers is just one factor in maximizing your return on a strong panel. Making an effort to cultivate a personal relationship between your company and the medical professionals included on your panel postings can go a long way toward ensuring your employees are receiving the best care at favorable rates, while simultaneously increasing return to work times. Reducing the amount of time your employees are out of work due to work related accidents and illnesses, directly impacts the cost of your Workers' Compensation program.

When the providers who regularly treat your employees have a sound understanding of your business and the physical demands placed on your employees, they can better assess how an employee's injury will impact his or her ability to perform the essential functions of the employee's job. Consider setting up a brief meeting with the medical provider to introduce yourself and to present an overview of your company's business: Job descriptions should also be developed and provided in advance to the medical provider for any positions with high rates of accidents or which make up the largest percentage of your workforce.

¹Harry Shuford and Tanya Restrepo, "Analyzing the Shift in Medical Share of Total Benefits," NCCI Research Brief, Winter 2009, P. 2.

²Pennsylvania also requires that employees acknowledge receipt of the provider panel before and after the injury.

Be sure to discuss your company's return to work philosophy with the medical provider. If you have a formal return to work program in place, let the providers know and consider furnishing an outline of the program. If you are willing to accommodate an injured worker's restrictions, be sure to stress that to the provider. If the provider knows you are likely to accommodate restrictions, they may be more apt to release an injured worker to return to work in a limited capacity.

If your medical providers and staff have a relationship with your company, they may be more proactive in their communication with you, reaching out when they have questions regarding an employee's injury, your ability to accommodate restrictions or to ask questions regarding the employee's day to day physical demands. Plus, maintaining a strong relationship with those providers will enable you to get quick updates on the status of your injured employees after office visits.

In closing, an effective way to establish a rapport with your medical providers is to schedule a face to face meeting with them. In that brief meeting you can discuss the providers treatment philosophy, give information about your business and discuss setting up formal Special Handling Procedures regarding office visits and reporting between your company and the medical facility. For assistance in initiating such a meeting and drafting Special Handling Procedures to best suit your needs, please contact your Graham Company Claims Consultant.

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Property Bytes

Insured's Duties After a Property Loss

A pipe bursts overnight and caused water damage to your offices or maybe your warehouse or plant. The carpeting is soaked, ceiling tiles and insulation are now all over the desks and computers. Your paperwork is soaked and destroyed. Aside from securing the pipe to prevent further damage and contacting The Graham Company's Claims Services Department immediately to assist in retaining a restoration company and place the proper parties on notice of the loss, what do you do next?

Property policies contain certain duties that are required of an insured after a property loss. Examples of such duties include: prompt notification of the loss to the insurance carrier, notification of the crime to local authorities (if applicable), prevention of further damage and cooperation with the insurance carrier during the investigation of the claim.

After the notification of the loss to the carrier, property policies require the insured to take reasonable steps to protect property from further damages (i.e. securing water from failed pipes, tarping roofs, etc.) and to keep an accounting of extra expenses incurred for claim valuation and settlement purposes. Efforts should also be made to set damaged property aside for the insurance carrier's inspection and it is strongly recommended that photographs of the damages and condition of the loss site be taken prior to the movement of any property, as well as, during the documentation and restoration process.

Although the restoration process may take some time, there are certain steps companies can take to expedite the claims process. We recommend providing the carrier with a complete and thorough inventory of the damaged property, in addition to any supporting purchase orders and original receipts or replacement invoices for the damaged property as soon as possible. We have found that the preparation of a detailed spreadsheet with costs and explanations for each line item can greatly affect the timeliness of a claim settlement. For larger and more complex losses which make providing such documentation in a short time period particularly difficult, a public adjuster or forensic accounting firm may be engaged, as well as, an advance payment may be requested from the carrier. Such actions or requests should be discussed with your Graham Company Claims Consultant.

In order to secure a claims settlement, the insurance carrier requires the insured to complete and sign a "sworn proof of loss" which basically serves as the insured's formal request for claim settlement under the property policy. A draft copy of the proof of loss should be provided to your Graham Company Claims Consultant for review prior to submitting to the insurance carrier.

These duties set forth within property policies allow for the investigation and documentation of losses necessary for the carrier to provide accurate and prompt claim settlements. They also allow for the carrier to take the steps necessary to determine the ability to pursue recovery against a potential responsible third party. The pursuit of recovery is called subrogation. If the carrier is exploring the possibility of subrogation against a responsible party, the property policy requires the insured's cooperation in the investigation and settlement of the subrogation claim. Cooperation may come in the form of providing the insurance carrier with copies of related leases, service contracts, maintenance agreements or any other related agreements or documentation.

Property policies are designed to compensate insureds for losses sustained and covered within the confines of the policy language. In order to ensure proper indemnification, these policies contain duties which set fairly strict time requirements from the notification of the loss to the carrier through to the final settlement of the claim. We strongly suggest involving your Graham Company Claims Consultant very early in the claims process.

Should you have any questions regarding a property claim, please contact your Graham Company Claims Consultant.

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Safety Bytes

Sprains and Strains in the Construction Industry

Sprains, strains, or musculoskeletal disorders (MSDs) are a significant problem for many organizations. This is particularly true for the construction industry. Construction trades have a higher incidence of back injuries and muscle strains than many other occupations.

To reduce the potential for sprains, strains, or MSDs it is necessary to address several factors. These factors are housekeeping, staging of material, work positioning, use of mechanical aides whenever practical, and stretching and flexing.

Stretch and Flex programs have become a standard practice for many employers and on many job sites throughout the country. A simple stretch and flex program takes 5 to 10 minutes at the start of the work day. It consists of easy-to-perform exercises to prepare the body for action by increasing blood flow and warming up the muscles.

Companies who have implemented such programs have found that stretching 3-5 days a week helps improve range of motion, posture, circulation, flexibility, morale, stress levels, and preparing muscles and joints for activity can protect you from injury.

Because of the exercises, workers are less likely to experience an incident that results in a strain, sprain or more serious injury during the course of the day. Over time, the exercises have been shown to raise workers' energy levels and to improve flexibility, strength and range of motion - all of which enhances a person's capacity to do physical work without injury.

Reducing injuries is good business. It saves money and enhances productivity.

Should you have any questions regarding Stretch and Flex Programs, please do not hesitate to contact the undersigned or your Graham Company Claims Consultant.

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Average direct costs associated with sprain and strain range from \$17,000 - \$19,000 per employee per year in the construction industry.

Sprains and strains continue to be the largest single cause of lost workday injuries in the construction industry. According to the Bureau of Labor Statistics, sprains and strains account for more than 40 percent of non-fatal occupational injuries.

Back injuries have consistently accounted for about 25% of all lost workday injuries for construction trades according to the Bureau of Labor Statistics.

In construction, over half of the back injuries are attributed to excessive or incorrect lifting.



Safety Bytes

The Importance of a Hearing Conservation Program

A hearing loss claim can cost a company anywhere from \$20,000 to \$75,000! Yet many employers do not even monitor noise in the workplace for fear of the added cost of managing a Hearing Conservation Program.

The starting point for a Hearing Conservation Program is a sound level and/or personal noise dosimetry survey. This will quantify and document what, if any, exposure exists. Without these surveys, an employee may be unknowingly overexposed to noise in the workplace, which could lead to noise induced hearing loss. In addition, without this documentation, the company will have no defense against hearing loss claims.

The next step is to document employee's hearing ability. This is done by performing baseline audiograms for employees exposed to high noise levels. This is especially important when an employee has previous high noise exposures and/or hearing loss from a hobby, military service or a prior employer.

Employee Audiograms must be repeated each year to identify employees who may have experienced hearing loss. Employees who are found to have a significant hearing loss during an annual audiogram must be retrained on the proper use of hearing protection and the supervisor should be reminded to enforce the proper use of hearing protection.

Employers must train their employees on how and when to use hearing protection and supervisors must enforce the use of hearing protection and document any disciplinary actions. The employer may also be required to investigate the use of engineering controls to reduce exposures in cases where noise levels are extremely high.

Managing an effective Hearing Conservation Program will help keep your employees in good health and your company in compliance with OSHA's Hearing Conservation Standard. It can also help prevent expensive hearing loss claims in the future.

For more information regarding Hearing Conservation Programs, please do not hesitate to contact the undersigned or your Graham Company Claims Consultant.

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