

CAIIA *Status Report*

FEBRUARY 2009

New Continuing Education Requirement

The biggest change in our regulatory climate is the new continuing education requirement from the DOI that we reviewed at our last convention. Responding to this new challenge is the most important work of this year. (See our report on it in our December Status Report. You can read it on our web site. Follow the link under Newsletters.) This new requirement from the state provides us with an obvious opportunity to help our particular constituency. This regulation affects only people who qualify to be active in our organization, licensed independent adjusters.

Helene DalCin, chair of the education committee, is working hard with her committee to get us positioned to provide that assistance. Since I have already heard from members anxious to learn of progress from this committee, following is a summary of their work to date from Helene.

On December 4, 2008, the CAIIA submitted an application to the California Department of Insurance to be certified as an approved provider of continuing education courses for independent adjusters. As of this writing, we have not received our certification, and we have made contact with Ms. Charlene Ferguson of the DOI to determine the status of our application.

In anticipation of receipt of our provider number, we are preparing the Course Approval Applications for submission to the DOI.

Pete Vaughan has selected members of an Education Committee, who have as their primary goal the development of relevant and interesting CE courses that will be offered to independent adjusters throughout California. In our effort to provide a variety of interesting topics at upcoming seminars, we are reaching out to partner with experts who provide diverse services to the claims profession. We will announce these courses in future issues of the CAIIA Status Report and on the DOI website as well as our own website.

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An Employer
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If you would like to receive the *Status Report* via e-mail please send your e-mail address to info@caiiia.org.

CAIIA Newsletter

CAIIA Office
P.O. Box 168
Burbank, CA 91503-0168
Web site - <http://www.caiia.org>
Email: info@caiiia.org
Tel: (818) 953-9200
(818) 953-9316 FAX

Editor: Sterrett Harper
Harper Claims Service, Inc.
Tel: (818) 953-9200

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**California Association
of Independent
Insurance Adjusters, Inc**

PRESIDENT'S OFFICE

836-B Southhampton Rd., #301
Benicia, CA 94510
707-745-2462
Email: info@caiaa.org
www.caiaa.org

PRESIDENT

Pete Vaughan
pvaughan@pacbell.net

IMMEDIATE PAST PRESIDENT

Pete Schifrin
pschifrin@sgdinc.com

PRESIDENT ELECT

Sam Hooper
sam@hooperandssociates

VICE PRESIDENT

Phil Barrett
barrettclaims@sbcglobal.net

SECRETARY TREASURER

Jeff Stone
jeffstone@stoneadjusting.com

ONE YEAR DIRECTORS

Paul Camacho
paul@missionadjusters.com
Helene Dalcin
hdalcin@earthlink.com
Kim Hickey
khickey@aims4claims.com

TWO YEAR DIRECTORS

Jeff Caulkins
jeff@johnricherby.com
Jenee Child
info@sequioapros.com
Rick Beers
NCI63@sbcglobal.net

OF COUNSEL

Bruce Bybee
500 Ygnacio Valley Rd., Ste. 300
Walnut Creek, CA 94596
925-977-9600 • Fax 925-977-9687
rbybee@sbcglobal.net

PRESIDENT'S MESSAGE

San Francisco

This year's mid term meeting will be held in San Francisco on the 16th and 17th of April. We will be meeting at the Hilton Financial District Hotel. About half of the rooms have a great view of the bay, and the remaining rooms have a wide view of the city. The location is within walking distance of Union Square, Chinatown, North Beach, and the Embarcadero. If you enjoy the city at all, this is the time to come. The slowing economy has given us higher than normal discounts. In checking Hilton's web site, I noted that the public rate for the same night is \$259, but our rates will be \$159 for a standard room. You will have the option to extend your stay at the same discounted rate, if you decide to further explore San Francisco or Northern California in general.

First word of advice; call your reservations in now or at least soon. The hotel will hold the rate until thirty days before the convention. That means to get this rate, you must make your reservation by March 16th. And now your second word of advice for your pocket book from Daddy Warbucks: overnight parking at the Hilton is \$47.00. If you must drive, I suggest parking across the street at the Portsmouth Square Garage - SF Chinatown. Their rate is \$26.00 for 24 hour parking. Smarter yet, take the Supershuttle from the San Francisco Airport for just \$17.00 per head each way. Once at the hotel, you can walk or take a cab anywhere you want to go. If you will be touring after the meeting, the hotel can arrange a rental car for local trips to be delivered and picked up, thus saving the overnight charge.

Upon your arrival on Thursday, April 16th, we will have an informal reception and dinner (probably in a private dining room) that evening. We will have our business meeting Friday, followed by lunch. After or toward the end of lunch, we will have a guest speaker arranged by Board Member



Helene DalCin. Attorney Victor R. Anderson of Candall, Wade & Lowe will discuss bad faith issues as they pertain to both property and liability claims. This is an area of law that is changing, and Mr. Anderson will help us to keep pace.

The Adjustamates will be exploring parts of the city and having lunch at a local eatery.

This is San Francisco, and it would be a shame if we did not take advantage of the great entertainment available. For those willing to extend the visit a bit, we will gather a group to go to the longest running show in history, Beach Blanket Babylon. It does not matter if you have seen this show before; it is guaranteed to make you laugh again, since they constantly update the lines to fit current political, economic and cultural developments. It is a small venue, so no binoculars will be necessary.

We look forward to seeing all of you at the upcoming mid term convention where we can enjoy each other's company and discuss the challenges facing our members.

PETE VAUGHAN

President - CAIIA 2008-2009

Have You Had Your Fraud Training?

Submitted by Barry Zalma

As of October 7, 2005, Subchapter 9, Article 2, starting at Section 2698.30 et seq, Special Investigation Unit Regulations were formally adopted and are now in force. If you are an employee of an insurer who has any business in California and anything to do with claims or underwriting, an independent adjuster or adjusting firm, a managing general agent, or an appointed agent of any insurer doing business in California and were not trained about insurance fraud recognition by the end of September 2005 you and the insurer are in violation of the California Code of Regulations.

The Regulations require each insurer to train you annually and to train all new hires within ninety (90) days of hire.

You can protect yourself, and the insurers you represent, from California Department of Insurance audits and fines by complying with the new Regulations.

If you and your staff have not been trained by the insurer(s) with whom you are employed or who you represent, and if you do not have a training program in force, you, your employer and the insurers you represent are in violation of the new California SIU Regulations. Fines can be assessed of \$5,000 to \$10,000 for each violation. [Section 2698.42 (b).]

The Regulations, at Section 2698.39, require every admitted insurer to train all integral anti-fraud personnel.

Integral Anti-Fraud Personnel include:

1. Claims Handlers;
2. Underwriters;
3. Agents;
4. Policy handlers;
5. Call center staff;
6. Legal staff; or
7. Other insurer employees that perform similar duties.

Very few people employed by an insurer or its agents are not included in this list.

The Regulations also require that the admitted insurer maintain “[R]ecords of the anti-fraud training provided to all staff [and that it] shall be prepared at the time training is provided and be maintained and available for inspection by the Department on request. The training records shall include the title and date of the anti-fraud training course, name and title and contact information of the instructor(s), description of the course content, length of the training course, and the name and job title(s) of participating personnel.”

Barry’s blog can be found at www.zalma.com

Hospitality Legal Times

Submitted by Tharpe & Howell - Offices throughout California

Changes to the Americans With Disabilities Act

On January 1, 2009, changes to the Americans With Disabilities Act (“ADA”) took effect. Some of the new changes include:

- Clarifying the definition of disability, including what it means to be “substantially limited in a major life activity.”
- Prohibiting the consideration of measures that reduce or mitigate the impact of impairment – such as medication prosthetics, and assistive technology – in determining whether an individual has a disability.
- Expanding the definition of “major life activities”.
- Emphasizing that the definition of “disability” should be interpreted broadly.

For further inquiry, please contact Christopher S. Maile, Senior Partner in charge of the Labor & Employment Law Department, at Tharpe & Howell's Sherman Oaks Office, (818) 205-9955; e-mail: email@tharpe-howell.com

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law, San Francisco, CA

Uninsured Motorist Coverage – Authority of Arbitrator

Catherine Louise Briggs, et al. v. Resolution Remedies, et al. Court of Appeal, First District (December 9, 2008)

Uninsured motorist claims are decided by arbitration under the provisions of Insurance Code §11580.2. This decision dealt with the authority of a court to review an order of the arbitrator.

Catherine Briggs was injured by an uninsured motorist while on work-related business. For some reason, she declined to file a workers' compensation claim. A dispute arose between her and her uninsured motorist carrier, GEICO, as to whether there was a duty to pay her any benefits before a determination of her entitlement to workers' compensation benefits. She demanded arbitration. The matter was submitted to Resolution Remedies. GEICO requested the arbitrator to stay the arbitration until Briggs pursued workers' compensation benefits. The arbitrator granted the motion.

Following the arbitrator's order, Briggs filed a petition for writ of mandate in the trial court. She requested the order be vacated so that she could pursue her right to benefits without opening a workers' compensation claim. The trial court denied the writ of mandate. Briggs appealed.

The Court of Appeal affirmed. The Court noted that arbitration pursuant to Insurance Code §11580.2 is governed by the California Arbitration Act. All disputes are to be decided by the arbitrator. The arbitrator decides questions of procedure and discovery. This includes granting a delay in bringing an arbitration to resolution. A trial court should not intervene in the arbitration.

In general, the trial court only becomes involved after the arbitrator has issued a final award and either affirms or vacates it. The Court stated that here, a request was made to the trial court for an interlocutory order of the arbitrator to be reviewed. The Court stated that there was no authority for such review and the trial court had no jurisdiction to entertain such a motion. Therefore, the trial court correctly declined to intervene in the arbitration. There was no jurisdiction to review the stay order. The judgment was therefore affirmed.

COMMENT

This is another in a series of cases reaffirming the role of the arbitrator in uninsured motorist cases and distinguishing that from the role of a court.

Duty of Care – Primary Assumption of the Risk

Fabian Luna, et al. v. Edilberto Vela Court of Appeal, Second District (December 15, 2008)

The application of the primary assumption of the risk doctrine to recreational activities continues to vex the courts. This case interpreted that doctrine for injuries arising out of a recreational volleyball game.

Fabian Luna, 13 years old, went to Edilberto Vela's home to play volleyball. Luna tripped on a line used to support the poles for the volleyball net while retrieving a ball and fell, hitting his arm and fracturing his right elbow. The line was the same color as the net, was stretched across a sidewalk and anchored by one of the yellow stakes next to a tree in a narrow grass parkway between the sidewalk and the street. Luna sued Vela for negligence and premises liability. Vela moved for summary judgment on the ground the case was barred by the doctrine of primary assumption of the risk. The trial court granted the motion. Luna appealed.

The Court of Appeal reversed. The Court noted that the primary assumption of the risk doctrine holds a participant is said to have assumed the risks inherent in a sport by choosing to participate in it and a defendant owes no duty to protect a plaintiff from those risks. A defendant is liable only for an intentional injury or engaging in conduct totally outside the range of ordinary activity involved in the sport. The intent is to avoid rules of liability that alter the fundamental nature of the sport or chill the fervor of athletic competition. The evaluation includes the role of the defendant whose conduct is at issue in a given case. It is important whether the defendant is an organizer, someone who provided facilities or a co-participant.

The Court noted that tripping over a tie line used to secure net poles while retrieving a volleyball hit out of bounds is a risk inherent in a front yard volleyball game. However, Vela had a duty not to increase that particular risk of harm beyond what was inherent in the sport itself. Here, it was alleged Vela had increased the risk. It was alleged that the tie lines were negligently placed and there were no flags or other markers to make the strings visible. In order to prevail on summary judgment, Vela had to establish not only the risk was inherent in the sport, but that his failure

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Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law, San Francisco, CA

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to distinctively mark the lines and his placement of them did not increase the risk of harm to participants. He did not do so.

Further, he did not demonstrate that placing the lines in a way to reduce the risk of tripping over them or flagging or brightly coloring them would alter the nature of the sport or deter participants from vigorously engaging in the sport. Thus, a question remained whether Vela breached his duty of care as a person who set up the front yard volleyball court. The Court felt it was for a trier-of-fact to determine whether

Vela breached his limited duty not to increase the risks inherent in the sport of volleyball. The Court indicated that although summary judgment may be possible on that limited issue, the matter may have to be resolved by a jury. The Court felt that the motion should have been denied. The judgment was therefore reversed.

COMMENT

The primary assumption of the risk doctrine, although designed to simplify cases involving injuries arising out of recreational activities, has been proven difficult to apply. This case is just one more example.

When You Need to Know What Really Happened

Submitted by Garrett Engineers, Inc. - Forensic Division, Long Beach, CA

Ford Fires - An SCDS Issue

As the family stumbled out of bed, no one doubted that there was a fire. A quick call to 911 brought the fire engines to the house. They evacuated the residents and knocked down the fire in about a half hour. The house was pretty much a total loss. Their two vehicles, which were safely locked in the garage, were also completely destroyed by the fire. A couple days later, the fire department investigators followed up, and determined the fire had started in the garage. GEI was brought in at that point to find out what really happened.

The two vehicles that were consumed by the fire were a very nice, late model expensive European sedan and a late model Ford pickup truck. Our expert followed the evidence trail and agreed with the fire department that the fire did, indeed, start in the garage. Furthermore, he pinpointed the cause down to a specific part under the hood of the pickup truck.

The specific part that was the culprit was the Speed Control Deactivation Switch (SCDS). This kind of switch was installed in over 16 million Ford/Lincoln/Mercury vehicles from 1992 through 2004. The National Highway Traffic Safety Administration and Ford Motor Company have since recalled 10.3 million of these vehicles to date. These include cars, trucks, and SUV's that have this switch as part of their cruise control system. But, interestingly, 5.7 million other Ford vehicles, with this specific switch, have yet to be added to the recall lists.

When the driver activates the cruise control and later steps on the brake pedal, the cruise control is electrically turned off (deactivated) by the same electrical switch that turns on the brake lights at the tail of the car. This switch is mounted on the brake pedal lever or arm, under the dashboard of the car. But what would happen if that small switch failed? The driver would then have to manually deactivate the cruise control-not a good plan, especially in an emergency situation.

Ford, therefore, came up with a better idea. The SCDS is a redundant (back-up) system that also deactivates the cruise control when the brakes are applied. The SCDS is located on the end of the brake master cylinder, usually pointing to the front of the vehicle, and sometimes pointing down to the ground. When the driver applies pressure to the brake pedal, a small sensor in the hydraulic brake system translates that increase in hydraulic pressure into mechanical movement. That mechanical movement pushes two electrical contacts away from each other to break open a previously closed electrical circuit. This turns off the cruise control. In this way, if there is a failure in the brake light switch, the SCDS takes over for the primary electrical deactivation switch located under the dashboard.

The SCDS is a 4th generation, \$20.57 pressure switch built by Texas Instruments to Ford's specifications. Texas Instruments states the switch was designed to handle a small (1-2 amperes) intermittent DC load. But Ford installed the switch into a 15 ampere circuit. Instead of an intermittent application, the circuit is energized at all times, even when the vehicle is turned off and the key is out of the ignition. This is why these vehicles can catch on fire in the middle of the night, while parked in a garage, and having been unused and unattended for many hours. As originally installed, the power to this switch is never turned off.

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When You Need to Know What Really Happened

Submitted by Garrett Engineers, Inc. - Forensic Division, Long Beach, CA

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The SCDS fails when brake fluid from the hydraulic side of the switch leaks through a barrier membrane, into the electrical side of the switch. Brake fluid is hygroscopic, meaning it readily absorbs water from the air, which then coats anything the brake fluid touches with water also. This results in corrosion and a conductive path-to-ground short-circuit. This short-circuit leads to overheating and melting of the wiring and copper contacts, setting fire to the plastic enclosure, and resulting in a fire that can consume the vehicle. Some SCDS fires are relatively small with only minor damage. Others become a runaway freight train that consumes the entire vehicle and anything within twenty feet. Each fire is different because conditions are different.

When the expert goes through the progression of steps to investigate and eliminate all possible points of origin and causes of the fire, he also locates the evidence needed to support his conclusions. With SCDS fires, the switch may still be attached to the brake master cylinder or it may have fallen onto the frame rail or the ground below the vehicle, depending on the severity of the fire. The recovery of the SCDS component is important in supporting the expert's opinion of the origin and cause of the fire.

Other factors that may be reported by the owner, in addition to the burnt SCDS itself, may show that a failure was beginning to occur within the SCDS. If the vehicle's cruise control was not operating properly (unwanted disengagement), if a mechanic mentioned to the owner that the vehicle had evidence of brake fluid leaking from the switch, if the vehicle had trouble shifting out of PARK, or if the fuse for the cruise control was melted, then the additional symptoms of a short-circuit and failure within the SCDS become additional evidence for the expert to consider in his analysis.

To further demonstrate the short-circuit within the switch,

an analysis by a laboratory can be performed to verify the failure. The copper contacts and electrical terminals of the switch are encased in plastic and sit atop a part of the switch called the Hexport. The Hexport is screwed into the end of the brake master cylinder. If the plastic pieces are still attached to the Hexport (however burned and melted the plastic may be) they can be non-destructively x-rayed to show the failure. If the switch failed, the x-ray will show the melted copper within the burnt plastic casing. If the internal parts are intact and not melted, then the switch did not fail. If the burnt plastic casing and contacts are not recovered, the Hexport itself can be examined by a Scanning Electron Microscope with Energy Dispersive X-Ray Spectroscopy (SEM/EDS), looking for evidence of melted copper on the Hexport. If fragments of copper are found melted onto the Hexport, this confirms that a short-circuit occurred within the switch. If there was no short-circuit, no copper is fused onto the Hexport and the SEM results will not report copper deposits.

A fire that started in another part of the vehicle (fuel system, electrical system, power steering, or air conditioning), or a fire started outside of the vehicle, does not burn hot enough to melt the copper. Only a short-circuit within the switch itself is able to generate the temperatures required to melt the copper parts, leaving their traces on the face of the Hexport. Thus, thorough laboratory testing can verify the failure of the SCDS. These SCDS fires have caused extensive property damage and even resulted in loss of life. Until the recalls are performed on all of the 10.3 million vehicles, these fires will continue to occur. And remember, 5.7 million vehicles with the same switch have yet to be added to the recall list. As the switches continue to age, more seals will fail.

If you have a Ford vehicle fire, or a structure fire that included a Ford, it would be wise to see if a failed SCDS may be the culprit.

Commissioner Poizner Announces Arrests of Two Auto Insurance Fraud Suspects

Insurance Commissioner Steve Poizner today announced the arrests of two individuals suspected of committing automobile insurance fraud and providing false information to a police officer. Navpaul Dhillon, 21, of San Jose self-surrendered to the Santa Clara County Sheriff's Office on December 10. Ajaypal Singh, 26, of Morgan Hill, self-surrendered to the Santa Clara County Sheriff's Office on December 9.

"Insurance fraud adds a \$500 tax on every man, woman and child in California," said Commissioner Poizner. "Defrauding insurance companies is a crime that hurts all consumers, and the Department of Insurance will continue to bring the perpetrators of these crimes to justice."

According to CDI and CHP investigators, on June 12, Dhillon was driving near Interstate-5 and Interstate-80 in Sacramento when he lost control of his Acura TL and crashed into a concrete divider. After the collision, Dhillon allegedly exited the freeway and pushed his vehicle into the Sacramento Salt Pond. He then purportedly filed a report with the San Jose Police Department and his insurance company, claiming that his car had been stolen.

Following the incident, Dhillon told investigators that he called his friend, Singh, and asked for a ride home. Singh confirmed that he drove Dhillon home. After reviewing additional facts surrounding the case, CDI investigators discovered that this information provided by both men was inaccurate. Singh later admitted lying about picking up Dhillon, and both men have since refused to provide any additional information to investigators about the incident.

The Santa Clara County District Attorney's Office is prosecuting this case.

STAY ALERT!! They walk among us, they REPRODUCE!

Number One Idiot of 2008

I am a medical student currently doing a rotation in toxicology at the poison control center. Today, this woman called in very upset because she caught her little daughter eating ants. I quickly reassured her that the ants are not harmful and there would be no need to bring her daughter into the hospital. She calmed down and at the end of the conversation happened to mention that she gave her daughter some ant poison to eat in order to kill the ants., I told her that she better bring her daughter in to the emergency room right away. Here's your sign, lady. Wear it with pride.

Number Two Idiot for 2008

Early this year, some Boeing employees on the airfield decided to steal a life raft from one of the 747s. They were successful in getting it out of the plane and home. Shortly after they took it for a float on the river, they noticed a Coast Guard helicopter coming toward them. It turned out that the chopper was homing in on the emergency locator beacon that activated when the raft was inflated. They are no longer employed at Boeing. Here's your sign, guys. Don't get it wet; the paint might run.

Number Three Idiot of 2008

A man, wanting to rob a downtown Bank of America, walked into the Branch and wrote this, "Put all our money in this bag." While standing in line, waiting to give his note to the teller, he began to worry that someone had seen him write the note and might call the police before he reached the teller's window. So he left the Bank of America and crossed the street to the Wells Fargo Bank. After waiting a few minutes in line, he handed his note to the Wells Fargo teller. She read it and, surmising from its spelling errors that he wasn't the brightest light in the harbor, told him that she could not accept his stick-up note because it was written on a Bank of America deposit slip and that he would either have to fill out a Wells Fargo deposit slip or go back to Bank of America.

Looking somewhat defeated, the man said, "Okay" and left. He was arrested a few minutes later, as he was waiting in line back at Bank of America.

Don't bother with this guy's sign. He probably couldn't read it anyway.

Number Four Idiot of 2008

A motorist was unknowingly caught in an automated speed trap that measured his speed using radar and photographed his car. He later received in the mail a ticket for \$40 and a photo of his car. Instead of payment, he sent the police department a photograph of \$40. Several days later, he received a letter from the police that contained another picture, this time of handcuffs. He immediately mailed in his \$40.

Wise guy

But you still get a sign.