

MARCH 2004

Seminars a Success!

For the twelfth year, the CAIIA held their Certification and Re-Certification the last week of February. As we go to print with this issue of the Status Report, it is anticipated that approximately 200 claims handling personnel will have participated.

CAIIA would like to thank Peter Schifrin, Schifrin, Gagnon & Dickey, Inc., for chairing this year's seminar. We also wish to thank instructors Sterrett Harper RPA, Harper Claims Service, Inc.; Bill Grand, Jr. RPA, Southland Claims Services, Inc.; John Swanson RPA, Swanson & Associates; Bill McKenzie RPA, Walsh Adjusting Company, Steve Tilghman RPA, AIMS; Steve Wakefield RPA, Ronald Bolt & Associates, Inc.; Bob Donnelley, AIMS; and Doug and Elaine Jackson, both RPAs, Southwest Claims Services, Inc.

It should be mentioned approximately 50% of the attendees are members of the California Association of Independent Insurance Adjusters, while the remaining 50% are insurance company personnel as well as claims handling personnel from various insurance agencies.

CCNC at new location for '04

The Claims Conference of Northern California will be held in Sacramento at DoubleTree Hotel on September 14th and 15th, 2004. The DoubleTree is doing a major renovation this spring and will be an exciting location for our conference.

The speaker's presentations are already in the works and details will be sent out as soon as plans have been finalized but the initial draft looks even more interesting than the excellent conferences that have been held in the previous ten years.

If you are interested in sponsoring at this year's event, please contact Marlon England at 559-709-0904 or Barbara Prosch at 530-626-1676 to receive more information.

California Undercover Investigations Nab Chiropractors, Medical Clinic Owner for Suspected WC Fraud

December 15, 2003

Two Southern California chiropractors and a medical clinic owner were arrested last week on charges of workers' compensation fraud following two investigations by the California Department of Insurance (CDI) Fraud Division.

Edgar Esparza, 28, of Downey, and Franco Gamboa, 46, of Diamond Bar, are charged with 12 felony counts of insurance fraud and workers' compensation fraud. Investigators charge that they reportedly illegally paid undercover officers to bring them potential patients, and then submitted bills for treating non-existent injuries. They were arrested at their homes.

Hilda Fernandez, 61, the owner of South Gate Medical Clinic, was arrested at her home in La Canada. She is charged with four felony counts of insurance fraud and workers' compensation fraud. Investigators said she reportedly paid undercover officers to refer patients to her clinic, and then submitted false medical billings for

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California Association of Independent Insurance Adjusters



An Employer Organization of Independent Insurance Adjusters

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Status Report Now Available by E-mail

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

CAIIA Newsletter

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■ **PRESIDENT'S MESSAGE**

I read in the paper that a group from Wellesley College in Massachusetts read aloud the entire works of Shakespeare in under 24 hours the other day. They were trying to get in the Guinness Book of Records, I certainly hope they were successful, after so much effort! It would have been timely to have heard someone read the famous lines from Julius Caesar, "Beware the Ides Of March!"

Ok, I confess, I majored in English Literature in college, so maybe I have more interest in that feat than some might. The Ides of March refers to March 15, a full week before our Mid Term meeting in Newport Beach, on 3/24-25, so CAIIA members attending have nothing to beware of. In fact, we encourage as many of you as possible to attend this meeting. The location is great, and the conference registration fees and hotel room rates are very low this year. We hope to see you there!

We will be discussing, among other CAIIA business, our fall conference, to be held at the Disney Grand Californian Hotel, in Anaheim. The CAIIA Board has already agreed to subsidize part of the room rate, so the price attendees will pay to stay at this magnificent hotel will be far less than one might expect! Doug Jackson is hard at work planning for this, the largest CAIIA event each year.

By the time this newsletter comes out, we will have completed our annual re-certification seminars, all over the state. Our thanks go to all the CAIIA Instructors who are volunteering their time for these important seminars. CAIIA members who attend the Mid Term meeting will be re-certified for free, as noted last month.

Mike Kielty of George Hills Company has initiated an exploratory look at a SIG, or Self Insurance Group, for Worker's Compensation, for CAIIA members. This is in the very early stages, so whether we will be able to put together such a group remains to be seen. If we are successful, this would obviously be a big value added benefit for CAIIA members! I will keep you posted on the results of such discussions, which begin the last week of February. I understand there are advantages and disadvantages of being in a SIG, but the potential for such a group will certainly be of great interest to many of our members, facing increasingly large premiums for worker's compensation insurance.

As I write this, I don't know whether March



will come in like a lion, but the weather forecast for this region certainly makes it look like the latter part of February will be wet and windy. No doubt this will bring smiles to the faces of most property adjusters, for whom wind and rain are the source of much work, although I am at that stage in my life and career where I prefer to stay inside, where it is warm and dry! I well remember many years ago, driving around after a storm in my company car, trying to settle and close as many new windstorm claims as I opened, 15 to 20 claims a day, at times! My territory then, in the early 70's, was in the Hemet area, and I know for a fact that heavy winds can do considerable damage to all the mobile homes in that area!

Most adjusters have similar tales to tell, and adjusting tall tales will be told at the Mid Term, I'm sure! I hope to see you there – and by the way, for those of you who read last month's column, my garage did get cleaned, by my two sons, bless their hearts! (One of those sons is, in fact a multi-line adjuster, so he will no doubt be busier than usual the next few weeks.)

Well, this message has been all over the place, hasn't it? Must be the rain and wind I hear outside, And yes, I am warm and dry, inside, where I belong. No more climbing up ladders to see and photo wind blown roofs for me!

LEE COLLINS, ARM

President - CAIIA 2003-2004

■ HRB Insurance Law Update

Prepared by Hancock, Rothert & Bunshoft, LLP

Gray Cary Ware & Freidenrich v. Vigilant Insurance Company, California Court of Appeal, Fourth District, Division One, Case No. D041811, Filed January 12, 2004.

The California Court of Appeal held that Civil Code section 2860 does not require the arbitration of disputes regarding Cumis defense costs (as opposed to disputes regarding Cumis defense counsel attorney fees, which must be arbitrated).

This case arose from an underlying action against Gray Cary, a law firm, and a private investigator it had retained. Gray Cary tendered the action to its insurance company, Vigilant, and Vigilant agreed to defend subject to a reservation of rights. Because the reservation of rights created a conflict of interest and triggered the right to independent counsel, Gray Cary defended itself as independent (Cumis) counsel. Gray Cary paid for the defense of its private investigator and then sought reimbursement of these legal fees from its insurer. Vigilant denied the request on the ground that the private investigator was not an insured under the policy. Vigilant refused Gray Cary's request to arbitrate this dispute under civil Code section 2860 and Gray Cary filed a petition to compel arbitration. Gray Cary argued that subdivision (c) of section 2860 encompasses disputes between an insurer and Cumis counsel over expenses incurred by Cumis counsel while representing the insured. The Court of Appeal rejected Gray Cary's argument.

The Court of Appeal held that the subdivision (c) requirement that "[a]ny dispute concerning attorney fees" be arbitrated, does not include disputes between an insurer and Cumis counsel over Cumis defense expenses. In reaching this decision,

Insurance Fraud Arrest

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treatment that was never performed.

"This kind of fraud adds tremendously to the overwhelming costs that employers face under our broken workers' compensation system," said Insurance Commissioner John Garamendi. "I am committed to finding these perpetrators and holding them accountable for their illegal activities."

If convicted on all charges, the chiropractors could face up to 10 years and four months in prison and a fine of \$350,000. Fernandez, if convicted, could receive a sentence of seven years and eight months in prison, as well as a fine of \$160,000. Bail was set at \$25,000 for each of the three suspects.

In connection with the case, search warrants were executed at homes and offices in South Gate, Downey, Santa Ana, La Canada and Diamond Bar. Grand Jury indictments were issued for the arrests. The CDI Fraud Division received assistance in the execution of the search and arrest warrants from the Orange County District Attorney's Office – Economic Crimes Unit, members of the Orange County Auto Theft Task Force (OCATT) and local agencies within each jurisdiction where the warrants were served.

the Court of Appeal noted that the Legislature specifically limited the arbitration requirement of 2860 to attorney fees and did not include defense expenses.

The Upper Deck Company, LLC v. Federal Insurance Company, United States Court of Appeals, Ninth Circuit, Case No. 02-56081, Filed January 12, 2004.

The Ninth Circuit held that an insurer did not breach the duty to defend its insured against a civil class action RICO suit alleging gambling violations absent indications that the complaint or evidence against the defendants at time of tender could have been construed as giving rise to claim of bodily injury.

This case arose from a lawsuit brought against the Upper Deck Company for violations of RICO and various gambling laws for randomly inserting valuable cards into the packages of its entertainment and sports cards. Upper Deck tendered this litigation to Federal Insurance Company under insurance policies covering claims for bodily injury arising out of an accident. Federal rejected the tender of the grounds that there was no suit against Federal for breach of contract and declaratory relief. Upper Deck then filed suit against Federal for breach of contract and declaratory relief. Upper Deck claimed that, although the lawsuit was styled as a RICO suit, it could have been construed or amended to assert damages for personal injury to children as a result of a gambling addiction. The Ninth Circuit rejected Upper Deck's argument and held that Federal had no duty to defend under the policies because neither the complaint nor the extrinsic evidence available at the time of tender could be construed as giving rise to a claim for bodily injury.

Ah, Lawyers

These are from a book called Disorder in the American Courts, and are things people actually said in court, word for word, taken down and now published by court reporters who had the torment of staying calm while these exchanges were actually taking place.

Q: Are you sexually active?

A: No, I just lie there.

Q: What is our date of birth?

A: July 15th.

Q: What year?

A: Every year.

Q: What gear were you in at the moment of the impact?

A: Gucci sweats and Reeboks.

Q: This myasthenia gravis does it affect you memory at all?

A: Yes.

Q: And in what ways does it affect your memory?

A: I forget.

Q: You forget? Can you give us an example of something that you've forgotten?

Continued on page 4

■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Property Insurance – Examination Under Oath – Failure to Attend

California Fair Plan Association v. Superior Court, Court of Appeal, Second District, (January 23, 2004)

An Examination Under Oath is commonly used to investigate claims made under a property insurance policy. This case examines whether the failure of the insured to submit to such examination bars the claim.

Barbara Darwish attempted to insure property of which she was a trustee. She was advised that California Fair Plan Association (Fair Plan) would not insure real property owned by a trust. She then assigned a one-tenth of one-percent interest in the property to Maurice Rivera, who applied for coverage without telling Fair Plan he was an assignee and owned only a small portion of the property. Fair Plan issued a policy to Rivera.

The property suffered a vandalism loss, and Rivera filed a claim. Rivera was asked by Fair Plan to attend an Examination Under Oath and to produce documents and records to determine the claim. He failed to comply. As a result, Fair Plan denied the claim. Darwish sued Fair Plan seeking to recover the amount of the loss. Fair Plan moved for summary judgment. The trial court denied the motion. A petition for writ of mandate was filed in the Court of Appeal.

The Court granted the writ and ordered the trial court to grant the summary judgment. The Court noted that California law has established that an insurance policy may provide that an insured must submit to Examination Under Oath as a condition precedent to the collection of benefits. An insurer has a right to refuse to pay benefits where an insured has failed to comply with this requirement. The Legislature, through Insurance Code section 2071, has set forth the terms of a standard fire insurance policy in California. The Code section sets forth that the insured may be required to submit to Examinations Under Oath. While the insured attempted to raise the specter of bad faith, the Court noted there was no evidence in the record that the refusal to submit to the Examination Under Oath was due to any conduct by Fair Plan or any of its agents.

Darwish contended that she had reasonable cause for not having Rivera submit to the Examination Under oath. This allegedly was based upon reliance on her former attorney. The Court noted, however, that when Rivera filed the property claim, the insurance adjusters requested Rivera to provide documentation to show he had an insurable interest in the property, Rivera did not respond. Fair Plan then requested that Rivera submit to an Examination Under Oath. Rivera did not respond to this request. Finally, Fair Plan sent a letter to Rivera warning that the failure to submit to the Examination could result in the denial of the claim. Having still received no response from Rivera, Fair Plan mailed to Rivera a fourth letter notifying him that the claim was denied. It was thus undisputed that Rivera refused to submit to the Examination Under Oath.

Since the Examination Under Oath was a condition precedent to suit in the policy, the trial court erred in denying the summary judgment to Fair Plan. The peremptory writ ordered the trial court to grant the motion.

COMMENT

While this case upholds the right of an insurer to insist upon an Examination Under Oath, the Court was clear in recognizing that there may be occasions for an exception. This case presented no such exception since the insured simply refused to submit to the Examination.

Ah, Lawyers

Continued from page 3

Q: How old is your son, the one living with you?

A: Thirty-eight or thirty-five, I can't remember which.

Q: How long has lived with you?

A: Forty-five years.

Q: What was the first thing your husband said to you when he woke up that morning?

A: He said, "Where am I, Cathy?"

Q: And why did that upset you?

A: My name is Susan.

Q: Do you know if your daughter has ever been involved in voodoo or the occult?

A: We both do.

Q: Voodoo?

A: We do.

Q: You do?

A: Yes, voodoo

Q: Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

A: Did you actually pass the bar exam?

Q: The youngest son, the twenty-year-old, how old is he?

Q: Were you present when you picture was taken?

Q: So the date of conception (of the baby) was August 8th?

A: Yes.

Q: And what were you doing at that time?

Q: She had three children, right?

A: Yes.

Q: How many were boys?

A: None.

Q: Were there any girls?



CAIIA REGISTRATION FORM

California Association of Independent Insurance Adjusters
ANNUAL MID-TERM BUSINESS MEETING — March 24-25 2004
Newport Beach Marriott Hotel & Tennis Club
900 Newport Center Drive, Newport Beach, CA 92660
(949) 640-4000 1-800-228-9290 Fax — (949) 640-5055 www.marriott.com
CAIIA Room Rate \$119 Single/Double

Attendees must make their own hotel reservations. Hotel Cut-off Date is Wednesday, March 3, 2004

Your Name _____ Significant Other _____

Company _____

Address _____

Phone _____ Fax _____

E-Mail _____

Please specify which events you and your significant other/mate will actually attend by placing a check mark in the box next to the event. Complete a separate form for each registrant, except for spouses.

EVENT	COST	#TICKETS
Registration Package — members with spouse/mate	\$ 125.00	_____
Registration Package — member w/o spouse	\$ 75.00	_____

SCHEDULED EVENTS

	You	Mate	
3/24 — 6:00 P.M. Registration/Hosted Reception	[]	[]	Please make your checks payable to CAIIA or pay by credit card. Mail or E-Mail Registration form and payment to: Lee Collins Gregory B. Bragg & Associates, Inc. P.O. Box 619058 Roseville, CA 95661-9058 lee.collins@gbbragg.com
3/24 — 7:30 P.M. Dinner	[]	[]	
3/25 — 8:00 A.M. Continental Breakfast	[]	[]	
3/25 — 9:00 A.M. Business Meeting	[]	[]	
3/25 — 12:00 P.M. Lunch	[]	[]	

3/25 — 12:00 P.M. During and following lunch, CAIIA members will be entitled to a 2004 Fair Claims Act Recertification session, included in the Registration Package at no extra charge.

Credit Card: AMEX ___ VISA ___ M/C ___

Cardholder _____

Card No. _____

Expiration Date: _____

Signature: _____

Any Questions, call:
 Lee Collins, Bragg & Associates
 (916) 960-0902

Cut-off date is March 10, 2004. Any registration after that date is subject to a \$35.00 late fee.

A Partial List of California's New Laws for 2004

Submitted by Bradley & Gmelich, Glendale, CA

More than 900 new laws are now on the California books. While some feel these laws will provide benefits, others think they will be detrimental. In fact, the California chamber of Commerce has called some of these; the "Job Killer" bills. Wherever your point of view, it is good to be aware of what's coming and the changes it might mean of you and your company. Here is a small sampling:

Sexual Harassment of Worker's by Non-Employees (Assembly Bill 76)

Under AB 76, an employer can be liable for sexual harassment of its employees or job applicants by non-employees, such as a customer or a client, if the employer, or its supervisor, knows or should know of harassing conduct and fails to take appropriate corrective action. This is a new duty being imposed on employers to constantly be aware of antics by people over whom they have no control.

Employer Pays For the Attorney? (Assembly Bill 223)

As an incentive to the state trial lawyers (who made significant contributions to the Davis campaign), AB 223 requires that employers will now have to pay attorneys fees if only a one-penny judgment is gained for the employee. (Attorneys fees will often run into hundreds of thousands of dollars.) This may encourage the filing of lawsuits even when there is no real injury to the employee in order to earn attorney fees. This will, undoubtedly, increase settlements, insurance premiums and, ultimately, costs to consumers.

Bounty-Hunting by Lawyers? (Senate Bill 796)

Previously, all wage and hour issues were handled administratively through the Labor Board or EDD. However, SB 796 now allows private attorneys to sue employers for wage and hour Labor Code violations in the Superior Court. This is known as the Labor Code Private Attorney's General Act of 2004. It also establishes a penalty for every section of the Labor code that previously did not provide one. (Workers compensation is excluded from this law.) Simple failure to post the proper signs can now result in an adverse civil judgment; penalties for failure to pay a proper wage could result in a penalty of \$100 per violation. And thanks to AB 223, above, this could result in the employer having to pay all of the employee's attorney fees!

Mandatory Workers' Health Insurance (Senate Bill 2)

Under SB 2, many employers will be required to pay for their workers' health insurance or else pay a hefty tax. (The first phase of this law actually does not take effect until 2006, and its opponents are working to repeal this one before then.)

Discrimination (Assembly Bill 196)

AB 196 now prohibits discrimination in employment or housing against people whose appearance differs from that normally associated with their gender. Employers may no longer tell a male receptionist, for example, that he cannot wear a dress to work. (Unknown ramifications for earrings, nose rings, hair styles.) Employers can still, however, require employees to comply with reasonable workplace appearance, grooming and dress standards, provided employees are allowed to appear or dress consistently with their gender identities.

Paid Family Leave (Senate Bill 1661)

Beginning in July 2004, as a result of the enactment of Senate Bill (SB) 1661, California becomes the first state to provide paid family-leave. Workers will be able to take up to six weeks paid leave to care for a seriously ill family member or to bond with a new child. Employers must post the new regulations as of January 1, 2004. (This law was passed in 2002, but is effective in 2004.)

Homeowners Associations (Assembly Bill 1525)

SB 1525 gives residents of California's nearly 37,000 homeowners' associations new rights to fly flags and put up signs.

Medical Advice (Senate Bill 478)

SB 478 provides a new right to workplace leave for employees who are victims of crime or relatives of crime victims to attend court proceedings.

Additional Whistleblower Protection (Senate Bill 777)

SB 777 strengthens protections for whistleblowers, including protection for those who reduce participation in activities they believe are illegal. The new law also creates a whistleblower's hotline for reporting violations to the Attorney General's office and employers are required to post the telephone number. The statute carries a penalty of \$10,000 per violation and does not require whistleblowers to report violations to employers prior to using the hotline.

■ CAIIA Calendar

■ Combined Claims Conference (CCC)

March 23-24, 2004
Pacific Palms Conference Center, Industry Hills, CA
Contact: Brenda Reisimger, 888-811-6933

■ CAIIA Midterm Meeting

March 24 & 25, 2004
The Marriott Newport Beach and Tennis Club,
Newport Beach, CA
Contact: Lee Collins, 916-783-0100

■ CAIIA Annual Conference

October 13, 14, & 15, 2004
The Disney Grand Californian, Disneyland Resort,
Anaheim, CA
Contact: Doug Jackson, 805-584-3494, ext. 11

■ Claims Conference of Northern California

September 14 & 15, 2004
The Doubletree Hotel, Sacramento, CA
Contact Barbara Prosch, 530-626-1676

**CAIIA Certification Seminars
Fair Claims Practices Regulations
Seminar Schedule - 2004**

The California Association of Independent Insurance Adjusters have scheduled their annual Certification and Re-Certification Seminars on the California Fair Claims Practices Regulations. All industry personnel are welcome to attend.

The California Department of Insurance requires that all personnel handling claims be certified on an annual basis that they are knowledgeable in the regulations.

This is the 12th year that the CAIIA has offered this valuable service.

It is necessary for those registering for re-certification to submit a copy of their current certificate, along with their registration form. If you can not produce a current certificate, you must register for full certification. Your certification need not be a CAIIA certificate.

You must bring a copy of the 1997 regulations with you to the seminar. You can purchase a copy of the regulations for an additional \$15.00 over and above your registration fee.

Due to expenses in preparation for these seminars, the CAIIA will not refund any registration fee.

Notice: Full certification will be conducted only at four locations, Oakland, Anaheim, San Diego, and Fresno. The other locations listed will handle re-certification only. Applicants for full certification need not register until 10:00 a.m.

Register now for the seminar you wish to attend. Be sure and mark the appropriate city in the box to the right.

Complete a form for each person.

Name _____

Co. _____

Address _____

City _____ Zip _____ Tel _____

<u>Fees (circle one):</u>	<u>Re-cert</u>	<u>Full cert</u>
CAIIA Member Fee	\$35.00	\$55.00
Non-Member Fee	\$50.00	\$80.00
Copy of Regulations	\$15.00	INC.
Amount Enclosed	\$ _____	

Make checks payable to CAIIA, mail registration, certificate, and payment to:

**CAIIA – Peter Schifrin
Schifrin, Gagnon & Dickey, Inc.
P.O. Box 2726
Van Nuys, CA 91404**

**Questions? Call Peter Schifrin
(818) 909-9090 Ext. 13**

SCHEDULE

Registration: 8:30 a.m. to 9:00 a.m.

Re-Certification: 9:00 a.m. to 10:00 a.m.

Full Certification: 10:00 a.m. to 12:30 p.m.

SEMINAR LOCATION AND DATES

_____ **Tuesday, February 24, 2004**
Glendale: Carl Warren
500 N. Central Ave. 4th Fl.

_____ **Tuesday, February 24, 2004**
Anaheim: Holiday Inn
1221 S. Harbor Boulevard

_____ **Wednesday, February 25, 2004**
Redding: Swanson & Assoc. Conf. Rm.
375 Smile Place
Suite C

_____ **Wednesday, February 25, 2004**
San Diego: King's Inn
1333 Hotel Circle South

_____ **Thursday, February 26, 2004**
Sacramento: Heritage Hotel
1780 Tribute Road

_____ **Friday, February 27, 2004**
Fresno: Ramada Inn
324 E. Shaw Avenue

_____ **Friday, February 27, 2004**
Oakland: Executive Inn
1775 Embarcadero



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