

MARCH 2009

## New Secretary / Treasure and Board Member

We are proud to announce that Jeff Caukins of Rickerby and Company, Glendale, CA, has taken over the Secretary / Treasure position. Kirsten Strong of Claims Consultants Group, Fresno, CA, has graciously volunteered to join the Board of Directors to replace Jeff Caukins' position. Due to work commitments, Jeff Stone has resigned as Secretary / Treasurer.

## CAIIA Now a DOI Approved Provider

Thanks to the Herculean efforts of Helene DalCin of Dalcin Claims Consulting, Burbank, CA, the CAIIA is now an approved provider for continuing education (CE) credits for licensed insurance adjusters. The CAIIA will be providing 2 hours of CE at the San Francisco mid-term meeting in April.

As a reminder all California licensed Independent Insurance Adjusters are now required to complete 24 hours of CE every two years. Start collecting those hours at our mid-term meeting on April 16-17.

## Dozens Arrested in Six Northern California Counties for Insurance Fraud

*Insurance Commissioner Poizner Issues Warning Against Auto Insurance Fraud*

SACRAMENTO - Today Insurance Commissioner Steve Poizner announced that, beginning January 28, 2009, the California Department of Insurance's Fraud Division (CDI) and investigators from the district attorney offices of El Dorado, Placer, Sacramento, San Joaquin, Stanislaus, and Yolo counties executed nearly 40 arrest warrants during Operation Cover Me. This operation investigated alleged auto insurance fraud over a two-month period, and resulted in 28 cases with 38 suspects. To date, 28 suspects, listed below by county, have been arrested and five were issued notices to appear for arraignment; there are outstanding arrest warrants on five remaining suspects

The district attorney offices of the respective counties are prosecuting these cases. Insurance fraud, a violation of California Penal Code §550, is a felony. If convicted, suspects face up to five years in prison and a maximum \$50,000 fine

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Independent Insurance Adjusters



An Employer  
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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](mailto: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](mailto: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

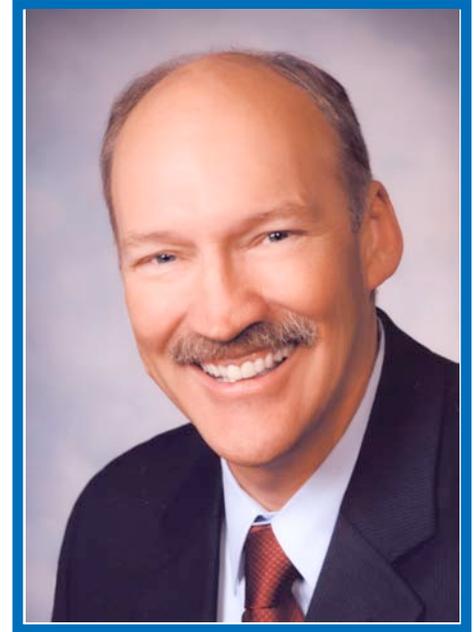
## PRESIDENT'S MESSAGE

### News

I have come to appreciate the depth of commitment and involvement we have with the board and officers of our organization. For example, you may have noticed Jeff Stone and his high level of commitment since he joined the organization a few years ago. He has been almost single handedly responsible for organizing and running our golf tournament. He has improved our budgetary position all while running a successful business of his own.

However, this year he seems to have bit off more than he could chew in accepting our nomination as Secretary/Treasurer. As he began to get into the work that this job entailed, he realized that he could not cover all of the bases and still run his business. I certainly understand his dilemma, since I also am a one man shop with limited time available. Jeff has become the victim of his own success. To his credit he let us know of the problem before his over-extended position caused the CAIIA any real difficulty. He resigned from the office. We thank him for taking decisive action early, and appreciate his continued commitment to the golf tournament and sponsorship.

So "Now, what?" says I. My talent search for a replacement was easy. Each officer had a different, excellent nomination to put forward. I settled on Jeff Caulkins, John S. Rickerby Company of Glendale. His most recent work for our association was getting the directory ready for printing, and increasing our sponsorship of the directory. The directory is due to be published on time for distribution at the upcoming Combined Claims Conference, March 2-4, at the Westin Long Beach. (Don't forget to sign up to man our both. This is some of the



best free marketing you will ever do.)

When I first asked him, poor Jeff Caulkins had just received a two million dollar fire assignment, so he was not thinking in terms of more volunteer work, but after a weekend of reflection, he agreed to take on the extra work. So, now I had to decide on a replacement for his now vacant board seat. Again my job was easy. Kearson Strong of Claims Consultants Group, Fresno, is known throughout the industry as a hard working volunteer. She has recently become our representative to the Claims Conference of Northern California organizing committee. She graciously accepted this new assignment as our board member as well.

Each officer learns his job while on the job. It was only after going through the above emergency response that I learned that there is a required protocol in the bylaws. In order to comply, I called an emergency (web based) board meeting. The board graciously confirmed the new nominees.

This little flurry of activity makes me

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# Weekly Law Resume

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

## Uninsured Motorist Coverage – Named Insured

*Mercury Insurance Co. v. David Douglas Pearson*, Court of Appeal, First District (December 4, 2008)

Insurance policies in California providing uninsured motorist coverage are required to mirror the statutory language provided for such policies. This case dealt with the definition of who was an insured under an uninsured motorist policy.

David Douglas Pearson and Susan Hyung were struck by an uninsured motorist while crossing an intersection on foot. He was listed as an additional driver under an automobile insurance policy issued by Mercury Insurance Company to Pearson's fiancée, Susan Hyung. Hyung died from her injuries.

Pearson was badly injured. Hyung was the named insured in the Mercury policy. Mercury paid its full per person limit on the Hyung claim. Pearson made claim for uninsured motorist benefits. Mercury denied Pearson's claim on the ground that the benefits only applied to named insureds, their spouses or to relatives living in their household, unless the accident occurred in or upon or entering into or alighting from an insured motor vehicle. Since Pearson did not qualify for uninsured motorist benefits because he was a pedestrian, his claim was denied.

Mercury sued Pearson for declaratory relief. Pearson cross-complained. Mercury demurred to the Pearson cross-complaint, and the trial court sustained Mercury's demurrer without leave to amend. Mercury followed with a motion for judgment on the pleadings, which was also granted. Pearson appealed.

The Court of Appeal affirmed. The Court noted that the uninsured motorist policy did not provide coverage for bodily injury sustained by a resident of the same house-

hold as a named insured, who was not a relative, unless the person was occupying a motor vehicle listed in the policy declarations. It was further stated that a designated person or driver who was not a relative was provided coverage only when operating or occupying a motor vehicle listed in the policy declarations. The policy contained a designated person endorsement which contained this language and was signed by both Pearson and Hyung. The Court found no ambiguity in the endorsement or policy. The policy clearly provided the drivers residing with the named insured, who were not listed on the declarations page as insureds, were not afforded the same coverage under the policy as named insureds. The policy's language mirrored the statutory definitions authorized by Insurance Code §11580.2 and thus there was no argument to make regarding construing any ambiguity against Mercury. Therefore, the trial court properly sustained the demurrer and granted the motion for judgment on the pleadings because the Mercury policy did not, as a matter of law, afford coverage for Pearson's injuries.

Pearson asserted that he should have been allowed to amend his cross-complaint to try to state a cause of action against Mercury based on representations of their alleged agents. However, the Court noted that policy language indicated that oral statements regarding the policy could not change the terms of the policy. Further, Pearson was not able to allege facts supporting a claim for reformation of the policy. The designated person endorsement signed by him and Hyung negated any claim for reformation. The endorsement clearly told him the type of coverage being purchased and warned him not to sign it if he did not understand it. Thus, he could not state a cause of action for reformation as a matter of law.

The judgment in favor of Mercury was affirmed.

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## PRESIDENT'S MESSAGE

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realize what a healthy organization we have. There was no shortage of talented people prepared to take on the new workload, and every officer was generous in giving time to advise on those options. In addition, we have been expanding our membership at a time when many organizations are shrinking. Our members have an expanded need for our association's services because of the new continuing education obligation. We are mov-

ing swiftly to fill those needs, thanks to Helene Delfine and the education committee. Once again I am reminded what a strong, vital organization we are, and that it is good to be the president.

**PETE VAUGHAN**

*President - CAIIA 2008-2009*

# Weekly Law Resume

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

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## COMMENT

With statutory language incorporated into policies, arguments regarding ambiguity are difficult to make. In this case, the policy language mirrored the statutory language, thus eliminating claims of ambiguity.

### Torts - "Good Samaritan" Does Not Have Immunity For Non-Medical Emergency Care

*Van Horn v. Watson*, California Supreme Court (December 18, 2008)

Under California law, a person generally has no duty to come to the aid of another. If, however, a person decides to come to someone's aid, he or she has a duty to exercise due care. A Good Samaritan, therefore, must exercise due care in rendering assistance. The California Legislature has enacted certain statutory exceptions to the due care requirement. One such exception is contained in Health and Safety Code section 1799.102, which immunizes any person who "renders emergency care at the scene of an emergency." This case addresses the scope of section 1799.102.

Plaintiff Alexandra Van Horn, Defendants Anthony Watson and Lisa Torti, and others partied together one evening. They left a bar at 1:30 am with Watson driving Van Horn and another person. Torti was in a second vehicle. On the way home, Watson lost control of his vehicle and crashed. Van Horn was in the front passenger seat. The group in Torti's car stopped to render assistance. Torti, concerned Watson's car might catch fire or blow up, removed Van Horn from Watson's vehicle. There was a dispute as to whether Torti picked up Van Horn or dragged her out of the car. Van Horn was rendered a paraplegic in the accident.

Van Horn sued Watson and Torti. Van Horn asserted a negligence claim against Torti, alleging that even though Plaintiff was not in need of assistance from Torti after the accident, Torti dragged her out of the car, causing the paralysis. Torti filed a motion for summary judgment, arguing she was immune pursuant to Health and Safety Code section 1799.102. The trial court granted the summary judgment. The Court of Appeal reversed. The California Supreme Court granted review and affirmed the Court of Appeal decision.

Torti argued to the Supreme Court that section 1799.102 should be applied broadly to include both non-medical

and medical care rendered at the scene of an emergency. Van Horn, on the other hand, contended that the Legislature only intended for section 1799.102 to apply to emergency medical care given at the scene of a medical emergency. In a 4 to 3 decision, Justice Moreno, writing for the majority, agreed with the narrower interpretation espoused by Van Horn. The majority ruled that the immunity provided by section 1799.102 was limited to medical emergency care, because of its' interpretation of the Legislative history of the statute. Further, the majority felt that the common law duty to exercise due care would be gutted if section 1799.102 was broadly interpreted — as suggested by Torti. The Court of Appeal decision was therefore affirmed.

In a strong dissent, Justice Baxter commented that the language of section 1799.102 was clear on its face. Nothing in the statute limited or qualified the kind of emergency aid that a Good Samaritan might provide without fear of later being sued by the person he or she tried to help. Justice Baxter chided the majority's decision as illogical. Justice Baxter pointed out that while an untrained volunteer is immune for incompetent medical assistance at the scene of an emergency, the same volunteer would be fully exposed to civil liability for emergency rescue efforts intended to prevent injury in the first place.

## COMMENT

This decision by the California Supreme Court would seem to inhibit Good Samaritans from coming forward to render assistance in an emergency situation. In response to this case, a bill is now pending before the California Legislature which would overturn this decision and provide immunity to any person rendering care—medical or non-medical—at the scene of an emergency.

### Attorney's Fee – Award to Prevailing Party

*Glencoe v. Neue Sentimental Film AG*, Court of Appeal, Second District (November 25, 2008)

The issue of an award of attorney fees to the prevailing party is becoming more common as contracts provide for such awards, as do many statutes. This case involves a contract provision where the plaintiff dismissed the action with prejudice after trial started.

Neue Sentimental Film USA leased commercial property from Marina Glencoe, LP. The lease contained a provision for an award of attorney's fees and costs to the prevailing party in an action involving breach of or action to enforce

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# Weekly Law Resume

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

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provisions in the lease. When Neue fell behind in the rent, Marina sued Neue and two related entities for breach of the lease. The theory was that the related companies also owed the rent as the alter ego of Neue. Neue filed for bankruptcy and one of the alter ego companies answered the complaint. An offer to settle by that company was rejected by Marina. After trial of the alter ego theory, defendant moved for judgment. Before a ruling, Marina filed a voluntary dismissal with prejudice. The attorney for the alter ego company moved for attorney's fees as the prevailing party. The court denied the request.

On appeal, the judgment was affirmed. The court noted first that Civil Code ' 1717, which provides for an award of attorney's fee in an action where a contract provides for such an award, also provides that where there is a voluntary dismissal of an action, there is no prevailing party for purposes of that section. It does not matter when the dismissal is filed. Thus, there was no prevailing party for

purposes of recovering attorney's fees and costs under Civil Code ' 1717. The court further found no manipulation of the system since the dismissal was filed with prejudice.

It was also contended there was a right to attorney's fee because the plaintiff had rejected a C.C.P. 998 offer to settle. However, in this case the offer was open only five days. That was well short of the statutorily designated period, which provides for the offer to remain open for 30 days. Here, the offer was revoked in less than that time and was therefore not a proper 998 offer and did not entitle the defendant to attorney's fees.

## COMMENT

This case shows that the strict requirements of both a Civil Code ' 1717 and C.C.P. 998 must be followed to be awarded attorney's fees.

## Dozens Arrested . . .

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on each count.

"In these tough economic times, the temptation to commit insurance fraud may be great but the lesson could not be more simple - do not do it, it is not worth it," said Commissioner Poizner. "Insurance fraud is not victimless, it is ultimately paid for by other California consumers."

CDI initiated Operation Cover Me after detecting a rising trend of suspected fraudulent cases where a claimant is either uninsured or inadequately insured, at the time of a loss. The claimant(s) subsequently obtains an insurance policy, and then allegedly lies about the date, time, or circumstances of the loss in order to get benefits to which they are not legally entitled. Operation Cover Me focused on three specific types of automobile fraud scenarios.

1. Suspects were involved in automobile accidents, but obtained insurance coverage after the fact;
2. Suspects were victims of auto theft, but purchased coverage after that theft; and
3. Suspects did not have insurance coverage for certain excluded drivers on the policies, but these excluded drivers are involved in accidents.

In several of the cases, the suspects allegedly conspired with or solicited friends, family members, and other drivers involved in the accident to help perpetrate the fraud. Alleg-

edly, fraudulent claims were paid up to \$9,800. Potential losses in other claims were approximately \$35,000. The insurance companies allegedly defrauded were.

- 21<sup>st</sup> Century Insurance Company
- Amco Insurance Company
- Anchor General Insurance Company
- California State Automobile Association
- Danielson National Insurance Company
- Esurance Property and Casualty Insurance Company
- Government Employees Insurance Company (GEICO)
- Infinity Insurance Company
- Mercury Insurance Company
- Progressive Advanced Insurance Company
- Permanent General Assurance Corporation
- Scottsdale Insurance Company.
- Titan Indemnity Company
- Unitrin Direct Insurance Company
- Victoria Fire and Casualty Company
- Western United Insurance Company



**REGISTRATION FORM**  
**California Association of Independent Insurance Adjusters**  
**ANNUAL MID-TERM MEETING –April 16, 17, 2009**  
**Welcome to Hilton San Francisco Financial District**



750 Kearny Street  
 San Francisco, California 94108  
 Tel: 1-415-433-6600  
 Fax: 1-415-765 7891

**Attendees must make their own hotel reservations. Hotel Cut-off Date is March 16, 2009**

**Room Rate=\$159.00 per night**  
**CAIIA REGISTRATION FORM**

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.**

<u>EVENT</u>	<u>COST</u>	<u>#TICKETS</u>
Registration Package - members with spouse/mate	\$250.00	_____
Registration Package - members w/o spouse	\$175.00	_____

\*Spouse/mates includes Dinner Thursday and Lunch Friday

**SCHEDULED EVENTS**

Please make your checks payable to CAIIA or pay by credit card. Mail Registration Form & payment to:

	You	Mate	
4/16– 5:30 P.M. Registration/Hosted Reception	[ ]	[ ]	Pete Vaughan
4/16 – 7:00 P.M. Dinner	[ ]	[ ]	Vaughan & Associates
4/17 – 8:00 A.M. Continental Breakfast	[ ]	[ ]	836 B Southampton Rd, #301
4/17 – 9:00 A.M. Business Meeting	[ ]	[ ]	Benicia, Ca 94510
4/17– 12:00 P.M. Lunch and 2 hour class	[ ]	[ ]	pvaughan@pacbell.net
4/17- 10:00 AM Adjustamates inc. lunch	[ ]	[ ]	

Credit Card: AMEX \_\_\_ VISA \_\_\_ M/C \_\_\_  
 Cardholder: \_\_\_\_\_  
 Card No. \_\_\_\_\_  
 Expiration Date: \_\_\_\_\_  
 Signature: \_\_\_\_\_

Any Questions, call:

Pete Vaughan (707) 745-2462

**Cut-off date is April 1 . Any registration after that date is subject to a \$35.00 late fee.**  
**Also, after March 16, 2009, rooms go to market pricing**



## The Annual "Stella Awards"

It's time again for the annual "Stella Awards"! For those unfamiliar with these awards, they are named after 81-year-old Stella Liebeck who spilled hot coffee on herself and successfully sued the McDonald's in New Mexico where she purchased the coffee. You remember, she took the lid off the coffee and put it between her knees while she was driving. Who would ever think one could get burned doing that, right?

That's right; these are awards for the most outlandish lawsuits and verdicts in the U.S. You know, the kinds of cases that make you scratch your head. So keep your head scratcher handy.

Here are the Stella's for the past year:

**7th place:** Kathleen Robertson of Austin, Texas was awarded \$80,000 by a jury of her peers after breaking her ankle tripping over a toddler who was running inside a furniture store. The store owners were understandably surprised by the verdict, considering the toddler was her own son.

**6th place:** Carl Truman, 19, of Los Angeles, California won \$74,000 plus medical expenses when his neighbor ran over his hand with a Honda Accord. Truman apparently didn't notice there was someone at the wheel of the car when he was trying to steal his neighbor's hubcaps.

**5th place:** Terrence Dickson, of Bristol, Pennsylvania, who was leaving a house he had just burglarized by way of the garage. Unfortunately for Dickson, the automatic garage door opener malfunctioned and he could not get the garage door to open. Worse, he couldn't re-enter the house because the door connecting the garage to the house locked when Dickson pulled it shut. Forced to sit for eight, count 'em, EIGHT days on a case of Pepsi and a large bag of dry food, he sued the homeowners insurance company claiming undue mental anguish. Amazingly, the jury said the insurance company must pay Dickson \$500,000 for his anguish. We should all have this kind of anguish.

**4th place:** Jerry Williams, of Little Rock, Arkansas, garnered 4th place in the Stella's when he was awarded \$14,500 plus medical expenses after being bitten on the butt by his next door neighbor's beagle – even though the beagle was on a chain in its owner's fenced yard. Williams did not get as much as he asked for because the jury believed the beagle might have been provoked at the time of the but bite because Williams had climbed over the fence into the yard and repeatedly shot the dog with a pellet gun.

**3rd place:** Amber Carson of Lancaster, Pennsylvania, because a jury ordered a Philadelphia restaurant to pay her \$113,500 after she slipped on a spilled soft drink and broke her tail bone. The reason the soft drink was on the floor: Ms. Carson had thrown it at her boyfriend 30 seconds earlier during an argument. What ever happened to people being responsible for their own actions?

**2nd place:** Kara Walton, of Claymont, Delaware, sued the owner of a night club in a nearby city because she fell from the bathroom window to the floor, knocking out her two front teeth. Even though Ms. Walton was trying to sneak through the ladies room window to avoid paying the \$3.50 cover charge, the jury said the night club had to pay her \$12,000 . . . oh, yeah, plus dental expenses. Go figure.

**1st place:** (May I have a fanfare played on 50 kazoos please) This year's runaway First Place Stella Award winner was Mrs. Merv Grazinski, of Oklahoma City, Oklahoma, who purchased a new 32-foot Winnebago motor home. On her first trip home from an OU football game, having driven onto the freeway, she set the cruise control at 70 mph and calmly left the driver's seat to go to the back of the Winnebago to make herself a sandwich. Not surprisingly, the motor home left the freeway, crashed and overturned. Also, not surprisingly, Mrs. Grazinski sued Winnebago for not putting in the owner's manual that she couldn't actually leave the driver's seat while the cruise control was set. The Oklahoma jury awarded her, (are you sitting down), \$1,750,000 PLUS a new motor home . . . Winnebago actually changed their manuals as a result of this suit, just in case Mrs. Grazinski has any relatives who might also buy a motor home.