

RETRACTION REGARDING ONLINE RENEWAL FOR INDEPENDENT ADJUSTERS

I was recently advised that the online renewal service will not apply to independent insurance adjusters because there is no way for the DOI to electronically verify the required bond information. Unfortunately, because independent adjusters represent such a small percentage of licensees in the state, the fact that we are an exception to the online renewal requirements for licensees was not communicated at the curriculum board meeting. The DOI analyst that I spoke with today was not certain as to how independent insurance adjusters will receive renewal notices (by US mail or electronic mail), but he is checking into it, and I will provide an update in our next newsletter. Please keep in mind that these regulations were developed for agents and brokers and modifications have been made to the statutes to include independent adjusters, but we and the DOI are navigating uncharted waters when it comes to the application of the regs to independent adjusters.

Helene DalCin

FLASH! FLASH! FLASH! NEW MEDICARE ROLL OUT DATE

It appears that the roll out date for the new Medicare/Medicaid reimbursement requirements has changed again. It is now set for January 1, 2011. Please see this link for more information: http://www.cms.hhs.gov/mandatoryinsrep/04_whats_new.asp

Construction Case Alert

Submitted by Haight, Brown & Bonesteel, LLP - Southern CA

APPELLATE COURT CONFIRMS ENGINEER'S DUTY TO DEFEND DEVELOPER ARISES UPON TENDER OF INDEMNITY CLAIM

In the recent case of UDC-Universal Development, L.P. v. CH2M Hill, 2010 Cal.App.LEXIS 47 (filed January 15, 2010), the Sixth District Court of Appeal provided a stunning illustration of the far-reaching effects of the California Supreme Court's holding in Crawford v. Weather Shield Manufacturing Inc. (2008) 44 Cal.4th 541. In Crawford, the Court held the duty to defend under an indemnity agreement arose upon the mere tender of defense of a claim covered by the indemnity.

In the UDC case, CH2M Hill provided engineering and environmental planning services to developer UDC on a project that ultimately wound up in a construction defect lawsuit by the homeowners' association ("HOA"). UDC tendered its defense to CH2M Hill, the tender was rejected, and UDC filed a cross-complaint for negligence, breach of contract and indemnity against

Continued on page 4

PUBLISHED MONTHLY BY
California Association of
Independent Insurance Adjusters



An Employer
Organization of
Independent
Insurance Adjusters

Inside This Issue

Retraction	1
Flash! Flash! Flash!	1
Construction Case Alert	1
President's Message	2
Coverage Alert	3
Fraud Arrests	3
Weekly Law Resume	4
Mid-term Reg. Form	5
Night at Magic Castle	6
CCC Registration Form	7
Hollywood Squares	8

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

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

Permission to reprint is always extended, with appropriate credit to CAIIA Newsletter

© Copyright 2010

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

PRESIDENT'S OFFICE

P.O. Box 5154
Cerritos, CA 90703
562-802-7822
Email: info@caiaa.org
www.caiaa.org

PRESIDENT

Sam Hooper
hooper@hooperandassociates.com

IMMEDIATE PAST PRESIDENT

Pete Vaughan
pvaughan@pacbell.net

PRESIDENT ELECT

Phil Barrett
barrettclaims@sbcglobal.net

VICE PRESIDENT

Jeff Caulkins
jeff.c@johnsrickerby.com

SECRETARY TREASURER

William "Bill" McKenzie
walshadj@sbcglobal.net

ONE YEAR DIRECTORS

Kearson Strong
kearson@claimsconsultantsgroup.com

Rick Kern
rkern@sgdinc.com

Rick Beers
NCI63@sbcglobal.net

TWO YEAR DIRECTORS

Tanya Gonder
Tanya@casualtyclaimsconsultants.com

Scott Hannaford
Hannaford@comcast.net

Art Stromer
artstromer@hotmail.com

OF COUNSEL

Nancy DePasquale
WILLIS & DePASQUALE, LLP
725 W. Town & Country Rd., Ste. 550
Orange, CA 92868
714-544-6000 • Fax 714-544-6202
ndepasquale@wdlegal.net

PRESIDENT'S MESSAGE

**FIRST (NON-MEMBER) TO
CORRECTLY ANSWER THE
CLAIMS PROBLEM BELOW
RECEIVES (1) COMPLIMEN-
TARY ATTENDANCE AT THE
EDUCATION PRESENTATION
(* Includes Breakfast & Lunch)
AT OUR APRIL 30, 2010
MIDTERM MEETING****

Smith Automobile Parts has a Commercial Property Policy with ABC Insurance Company. The limits of the building coverage is \$100,000.00. The policy has a \$500.00 deductible on the building, and an 80% Coinsurance Clause. The replacement cost value of the building is \$175,000.00. The building sustained a covered loss in the amount of 40,000.00. How much is the insurer obligated to pay.

Email your answer by
March 15, 2010 to:
Sam@hooperandassociates.com

Well before licensed independent insurance adjusters were obligated to incur a minimum number of continuing education credits (including specified subjects), CAIAA was in the forefront of educating their members and the entire insurance industry on sound claims practices standards. Historically, our members have consulted with legislators and consultants on various claims issues affecting the California claims environment. As of this writing, at least one of our members serves on the continuing education curriculum committee of the California Department of Insurance.

As discussed in last month's mes-



sage, this year is shaping up to be CAIAA's most active. In addition to our certification seminars, events with other certified educational providers in the state are being scheduled. And based upon CAIAA's reputation in educations, more and more providers seek partnering with us and providing valuable and relevant courses. We hope you took advantage of the Soot & Smoke seminar.

Our midterm meeting looks to offer a four hour course with topics covering broad California claims disciplines. Register early. Following the meeting (for those who want to take advantage of the additional activity) Art Stromer is organizing a fun evening at the Hollywood Magic Castle. See you there!

**Contest is underwritten by CAIAA sponsor, Sam Hooper & Associates, Inc.



SAM HOOPER

President - CAIAA 2009-2010

Coverage Alert

Submitted by McCormick Barstow

The California Supreme Court held that the “made-whole rule” does not include liability for attorney fees incurred by the insured in obtaining compensation from a third party tortfeasor

21st Century Ins. Co. v. Superior Court, 47 Cal.4th 511 (2009).

BACKGROUND FACTS

Silvia Quintana suffered injuries in an automobile accident with a third party. Her insurer, 21st Century, paid her \$1,000 under her insurance medical payments (or med-pay) provision. Quintana subsequently sued the third party tortfeasor and settled for \$6,000. In obtaining the settlement, she incurred in excess of \$2,000 in attorney fees. 21st Century subsequently requested that Quintana repay the \$1,000 it had paid her. Quintana paid 21st Century \$600 and 21st Century eventually agreed that this amount fully satisfied its reimbursement claims as it accounted for 21st Century’s pro rata share of the attorney fees expended in collecting damages from the tortfeasor.

Quintana subsequently filed a class action lawsuit against 21st Century, alleging violation of Business and Professions Code section 17200, conversion, unjust enrichment and declaratory relief. Quintana argued that 21st Century could not lawfully require reimbursement because she had not been made whole by the settlement when her attorney fees exceeded \$2,000. 21st Century demurred to the complaint, but the trial court overruled the demurrer. 21st Century then filed a petition for writ of mandate with the Court of Appeal, which writ was granted. The Court of Appeal held that the made-whole rule does not require an insurer seeking reimbursement to consider the attorney fees the insured expended in recouping his or her losses from the tortfeasor. Quintana petitioned for review to the California Supreme Court.

THE COURT’S RULING

In affirming the Court of Appeal, the California Supreme Court concluded that although the made-whole rule requires that the insured be made whole as to all damages proximately caused by the injury before an insurer can recover amounts paid under its med-pay provisions, liability for attorney fees is not included. Instead, such fees are subject to a separate equitable apportionment rule (or pro rata sharing) that is analogous to the common fund doctrine.

THE EFFECT OF THE COURT’S RULING

Where an insurer makes payments under a medical payments provision, and the insured is subsequently made whole by way of settlement with the tortfeasor, the insurer will be entitled to reimbursement of the med-pay payment amount, in spite of the fact the insured incurred attorney fees in pursuing the tortfeasor, subject to a pro rata sharing of the attorney fee burden.

Insurance Commissioner Poizner Announces Simi Valley Extended Family Arrested for Allegedly Falsifying More Than \$1.4 Million in Insurance Claims

California Insurance Commissioner Steve Poizner announced today that four individuals were arrested yesterday by California Department of Insurance (CDI) detectives on multiple felony counts of insurance fraud and grand theft. Michael R. Persky, 42, and his girlfriend, Shelley L. Dunkel, 39, both of Malibu, as well as Dunkel’s mother, Carol A. Dunkel, 64, of Simi Valley were taken into custody at CDI’s Valencia Regional Office. An associate, Fredy Buraye, Jr., 33, of Simi Valley was arrested at this residence.

The year-long investigation originated from a March 2008 suspected fraudulent claim involving the alleged theft of Persky’s motor home. After his insurance carrier, National Interstate Insurance Co., settled the claim for approximately \$80,000, CDI received information indicating that Persky was, in fact, in possession of the motor home. Pursuant to a search warrant executed in February 2009, CDI detectives seized the vehicle at a Simi Valley business owned by Persky.

During the course of the investigation into the alleged theft of the motor home, detectives uncovered several other suspected fraudulent claims involving the Dunkels and Buraye. Three such separate claims involved the alleged theft of personal property including furniture, bath fixtures and artwork, purportedly individually-owned by Shelley Dunkel, Carol Dunkel and Buraye. In a claim made to Stonington Insurance Co., Buraye claimed that his property was stolen from an Antelope Valley storage facility owned by Shelley Dunkel, on August 22, 2007. He was eventually paid approximately \$150,000 for the claim. Shelley Dunkel and Carol Dunkel made claims to State Farm Insurance Co. and Farmers Insurance Co., respectively, for an alleged October 26, 2008, burglary at a Lancaster home owned by Carol Dunkel. Both claimed approximately \$600,000 worth of personal property was stolen. CDI’s investigation into these three claims turned up documentation suggesting that each individual claimed exactly the same items as being stolen. However, several of the allegedly stolen items for which all three claims were made were observed at Persky’s Simi Valley residence during the aforementioned February 2009 search warrant.

National Interstate Insurance Co., Stonington Insurance Co., State Farm Insurance Co., and Farmers Insurance Co. assisted CDI in this investigation.

Construction Case Alert

Submitted by Haight, Brown & Bonesteel, LLP - Southern CA

continued from page 1

CH2M Hill and others. After the HOA's construction defect claims were settled, UDC proceeded to trial against CH2M Hill. The jury found in favor of CH2M Hill on the claims for negligence and breach of contract. At the request of the parties prior to trial, the trial court ruled on the application of the indemnity agreement in light of Crawford and, in so doing, found that the defense obligation arose upon the tender and that CH2M Hill breached that duty despite the jury finding in favor of CH2M Hill.

The Court of Appeal affirmed, noting that the defense obligation arose "as soon as the defense was tendered and did not depend on the outcome of the litigation," and that the HOA's general description of the defects along with an allegation that "Doe" engineers were negligent triggered the duty to defend.

Although this case did not expand the crushing impact of Crawford's holding, it is a reminder that all parties in the construction process can be ensnared by this type of indemnity agreement. While California has put the brakes on subcontractor indemnity requirements for residential construction (Civil Code §2782(c)), the defense obligation will still exist to the extent it is embraced by the indemnity agreement. As litigation increases against design professionals, such professionals should consider consulting with counsel to evaluate appropriate limitations on liability prior to the execution of a contract.

Weekly Law Resume

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

Coverage - Occurrence - Encroachment

Fire Insurance Exchange v. The Superior Court of San Bernardino County, Court of Appeal, Fourth District (January 26, 2010)

Following the California Supreme Court decision in *Delgado v. Interinsurance Exchange* (2009) 47 Cal.4th 302 regarding the scope of coverage under an "occurrence" policy, it was expected that subsequent decisions would explore its scope. This case involved the issue of whether building a structure that encroached on another's property in good faith is an "occurrence."

Kenneth and Dorothy Bourguignon owned property adjoining Leach. Bourguignon obtained from Leach a Lot Line Adjustment for a five and a half foot easement over the Leach property. When the Parsons purchased the Leach property, they disputed the Lot Line Adjustment. The Bourguignons sued the Parsons for quiet title and adverse possession of the five and a half foot strip and the Parsons cross-complained. Damages were sought for diminution in the value of the property. The Parsons specifically alleged Bourguignon knew that his residence encroached on the Leach property.

Bourguignon tendered to Fire Insurance Exchange ("FIE"). FIE refused to defend. Bourguignon sued FIE. FIE moved for summary judgment, which was denied. FIE filed a petition for writ of mandate in the Court of Appeal.

The Court of Appeal granted the writ. It ruled FIE had no duty to defend. The policy provided defense and indemnity for "an occurrence" which was defined as an "accident." Using language similar to *Delgado*, the Court stated an "accident" is an unintentional, unexpected chance occurrence. It does not exist following a deliberate act unless some additional, unexpected, independent, and unforeseen happening occurs that produces damage. The insured's belief that he has a legal right to engage in deliberate conduct does not make it an "accident."

The Court acknowledged that the previous authorities were split on property disputes such as the one in this case. This Court chose to follow the cases which have held intentional conduct does not constitute an "accident" when the person engaging in the conduct is unaware of its wrongful character. Here, the Bourguignons built the house where they intended to build it. The act of construction was intentional and was not an "accident," even though they believed they had a right to do so. There was no unexpected, unintended event between the intentional construction of the building and the encroachment.

The Court therefore ruled that the trial court erred in denying summary judgment to FIE. A preemptory writ of mandate was issued directing the trial court to issue such an order.

COMMENT

The dissent disagreed with the majority opinion and argued that because the encroachment was not expected, it was therefore an accident. There will be other cases on this issue until the Supreme Court resolves the conflict among the cases.



CAIIA REGISTRATION FORM
California Association of Independent Insurance Adjusters
MID-TERM MEETING –April 30, 2010
HILTON LOS ANGELES/UNIVERSAL CITY
555 Universal Hollywood Drive
Universal City, California 91608
Tel: 818-506-2500



Mention California Association of Independent Insurance Adjusters for special room rates
Attendees must make their own hotel reservation!

FOR THE MAGIC CASTLE DINNER & SHOW ON 04/30/10 - CONTACT ART STROMER
 E-mail: ArtStromer@hotmail.com

Your Name _____ Spouse/Guest _____
 Company _____
 Address _____
 Phone _____ Fax _____
 E-Mail _____

EVENT	COST	#TICKETS	Total Price
Member Meeting Package (**) (Includes Dinner/Reception, Breakfast, CE Class, luncheon, and Business Meeting)	\$ 180.00	_____	\$ _____
Non-Member Meeting Package (Includes Dinner/Reception, Breakfast, CE Class, and luncheon)	\$ 190.00	_____	\$ _____
Spouse/guest fee (***)	\$ 100.00	_____	\$ _____
4 Hour CE Class (Includes breakfast & lunch (**))	\$ 100.00	_____	\$ _____
Grand Total Payable			\$ _____

SCHEDULED EVENTS

Please specify which events you and/or your spouse/guest will actually attend by placing a check mark in the box next to the event. Complete a separate form for each registrant and additional guest.

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

	You	Spouse/Guest
04/29 - 6:30 P.M. Cocktails (No Host bar)		
04/29 - 7:30 P.M. Dinner	[]	[]
04/30 - 7:00 A.M. Registration/Breakfast	[]	
04/30 - 8:00 A.M. Seminar	[]	
04/30 - 12:00 P.M. Luncheon	[]	
04/30 - 2:00 P.M. Business Meeting (*)	[]	
04/30 - 10:00 AM Spouse/Guest lunch (***)	[]	[]
04/30 - 6:30 P.M. Magic Castle Dinner/Show Event	[]	[]

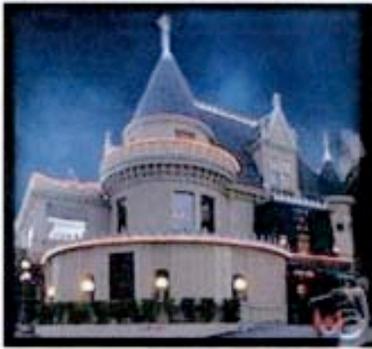
Sam Hooper & Associates
17316 Edwards Road, Ste 100
Cerritos, CA 90703
Sam@hooperandassociates.com
562-802-7822
FAX 562-926-6337

(*) Members only

Credit Card:	AMEX <input type="radio"/> VISA <input type="radio"/> M/C <input type="radio"/>	3 Digit Security #	
Cardholder:		Signature:	
Card No.		Expiration Date:	
Card Address (City/State/Zip)			

(**) AN ATTENDING MEMBER ORGANIZATION IS REQUIRED TO PURCHASE AT LEAST ONE PACKAGE
 (***) Spouse/guest fee includes dinner on Thursday and lunch on Friday.

Early registration is encouraged. Cut-off date is March 21, 2010.



A NIGHT AT THE MAGIC CASTLE

In coordination with our 2010 Mid-term meeting, the California Association of Independent Insurance Adjusters is offering a night at the Magic Castle to include dinner and one or more shows... all-inclusive in the price of \$85.00 per person. Valet, beverages, and shuttle charges are extra.

Dinner will begin at 6:00 p.m. and consists of a three-course meal with the choice of one entrée from a prefixed menu, including beef, fish, chicken or a vegetarian dish. Salads and scrumptious deserts included.

With dinner you are guaranteed to see the Palace of Mystery Show that starts after your meal. There are also other shows that are an option. The **Close-Up Gallery**, the **Parlour of Prestidigitation**, and...on our night...they will offer extra magic in the **Hat N Hare Pub** and **The Inner Circle**.

There is a dress code. Coat and tie for men. Cocktail dress, pant suit, or pants with a blazer for women. Any questions on attire should be directed to The Magic Castle @ 323 851-3313.

As I have arranged for a member of the Magic Castle to join us, he may perform for some of our members.

Let us know the number of people who will attend. Please respond no later than 2-15-2010. We are working on shuttle arrangements. Send no money now, we will collect funds later.

<u>CAIIA Member/Guest</u>	<u>No. of Attendees</u>	<u>Approx. Unit cost</u>	<u>Total</u>
_____	_____	@ 85.00 ea	\$ <u>0.00</u>

If you have any questions, please email Art Stromer at artstromer@hotmail.com

For Those of Us Who Remember . . . HOLLYWOOD SQUARES

These great questions and answers are from the days when Hollywood Squares game show responses were spontaneous, not scripted, as they are now.

Peter Marshall was the host asking the questions, of course.

Q: Paul, what is a good reason for pounding meat?

A: Paul Lynde: Loneliness!

(The audience laughed so long and so hard it took up almost 15 minutes of the show!)

Q: Do female frogs croak?

A: Paul Lynde: If you hold their little heads under water long enough.

Q: If you're going to make a parachute jump, at least how high should you be?

A: Charley Weaver: Three days of steady drinking should do it.

Q: True or false, a pea can last as long as 5,000 years.

A: George Gobel: Boy, it sure seems that way sometimes.

Q: You've been having trouble going to sleep. Are you probably a man or a woman?

A: Don Knotts: That's what's been keeping me awake.

Q: According to Cosmopolitan, if you meet a stranger at a party and you think that he is attractive, is it okay to come out and ask him if he's married?

A: Rose Marie: No wait until morning.

Q: Which of your five senses tends to diminish as you get older?

A: Charley Weaver: My sense of decency.

Q: In Hawaiian, does it take more than three words to say 'I love you'?

A: Vincent Price: No you can say it with a pineapple and a twenty.

Q: What are 'Do It', 'I Can Help', and 'I Can't Get Enough'?

A: George Gobel: I don't know, but it's coming from the next apartment.

To be continued . . .