

CAIIA *Status Report*

APRIL 2009

NEWS OF MEMBERS

Schifrin, Gagnon & Dickey (SGD), a provider of California state-wide claims adjusting and investigation services and nationwide claims administration has acquired Southwest Claims Service of Simi Valley, California.

Southwest Claims Service was established in 1985 and has provided claims handling services to insurers and self-insured's with distinction for over 24 years. The synergy of both companies has created a more robust and effective organization...all of which benefit our clientele.

Douglas Jackson, RPA has over 30 years of insurance claims experience. He has worked for both commercial and homeowners insurance carriers. Mr. Jackson is the past president of the California Association of Independent Insurance Adjusters. During his time on the executive board he was instrumental in the creation of the SEED (Seminar for the Evaluation of Earthquake Damage) program to assist adjusters in complying with California earthquake certification requirements.

Mr. Jackson is also the president of the Society of Registered Professional Adjusters. Mr. Jackson was part of a team assembled by the California Department of Insurance to write the new test for adjuster licensing. Mr. Jackson was the 2008 Claims Professional of the Year.

Rex Teffeteller, CPCU, is a multi-line adjuster with an emphasis on residential and commercial property. Rex has over 30 years of claims experience.

Elaine Jackson is a general liability specialist with over 30 years of industry experience. Elaine regularly handles high value personal injury and suspicious claims.

SGD is very pleased to add the knowledge and experience of these claims professionals to their staff. Please visit www.sgdinc.com for more information.

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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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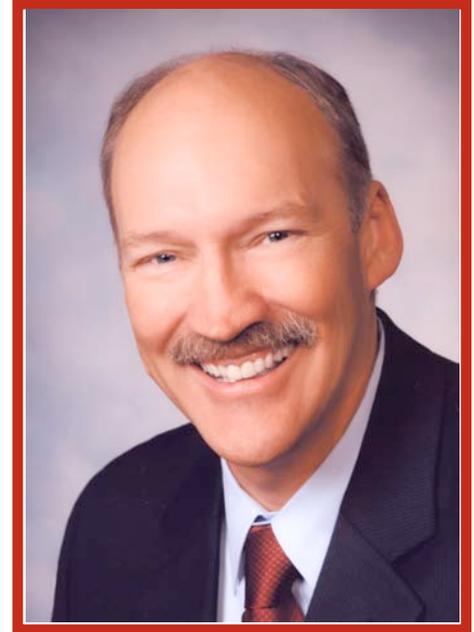
PRESIDENT'S MESSAGE

Why I Love My Job

Have you noticed that adjusters are not the type of people that need to know exactly what we are going to do next week or even the next day? Variety is what marks the life of an independent adjuster. We are also the last of the true renaissance artisans in the breadth of our knowledge and experience.

One day we may be in downtown Los Angeles or San Francisco working in a high rise, with an insured that is a law firm on their business interruption claim. The next day we may find ourselves on a ranch, or truck farm dealing with a farm policy. One insured has a cash flow that could finance a small city, and the next day we are visiting a neighborhood so poor that we need an appointment before 10:00 AM, because the neighbors have too much interest in our wallet. One day our insured is a professor of English, and the next day we need an interpreting service to interview our insured. Our insured can be personal lines, main street business, middle market, universities, or small government.

A company adjuster must be a good deal more specialized than we IAs can possibly be. We must find enough work to stay busy by representing a variety of accounts. A company adjuster works for a company that has a certain line of business; personnel lines, for example, or car dealerships. They become specialists at that line. They work in a unit that may handle only construction defects, or fires with a reserve of \$50,000 to \$200,000. They may only handle litigated files involving bus drivers or jewelry losses for the entertainment industry. And they may think we are not



knowledgeable, because they know everything about a relatively narrow activity. How dull their life seems. Many of them never get out of the office, the poor things.

An independent liability adjuster must have investigation skills and excellent communication abilities in both written and spoken form. They must understand something of medicine, and just about all of its specialties. When there is property damage, they also need to know or at least deal with just about any issue of construction that a property adjuster faces. At times, the work resembles that of a court reporter, attorney, judge, driver, photographer, risk manager, doctor, psychologist, salesman, and journalist.

What about the independent property adjuster? We also do all of the stuff listed above except medicine. Instead, we set the scope of work for the carpenters, plumbers, drywall and painters, masons, electricians, etc. But everything is not buildings. Anything that is of value can be the

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Commissioner Poizner Announces San Diego Man Arrested on Automobile Insurance Fraud Charges

Insurance Commissioner Steve Poizner today announced that Ronnie Bennett, 50, of El Cajon, was arrested in connection with insurance fraud and filing a false police report. Bail was set at \$60,000.

"Breaking the law in an attempt to escape debt never pays off," said Commissioner Poizner. "Investigative experts from CDI, DMV and other state agencies work together constantly to combat crime and put criminals behind bars."

According to CDI investigators, in November 2008, Bennett drove his 1999 Cadillac Catera to a repair shop in La Mesa to have it inspected due to mechanical problems. The owner of the shop knew Bennett as a regular customer. The vehicle was inspected and found to require expensive repairs. Bennett allegedly returned to the shop a few weeks later, and filled out an invoice for his vehicle, at the shop owner's request. Instead of providing his real name on the invoice, Bennett allegedly wrote the name "Butch Johnson," and an address that does not exist. His vehicle remained at the shop.

One week later, Bennett allegedly filed a police report with the El Cajon Police Department, reporting that his vehicle was stolen from his residence. He also purportedly filed an insurance claim, alleging that his vehicle was stolen from his residence. He later allegedly signed an affidavit of theft, under penalty of perjury, in which he claimed his vehicle was stolen. A few weeks later, his insurance company issued a check for \$3,574 to Bennett for the vehicle.

The owner of the repair shop repeatedly called Bennett in an attempt to have him pick up his vehicle, or pay a deposit to begin repairs. Bennett was reportedly non-responsive. The shop owner then initiated a lien sale on the vehicle, and learned it had been reported stolen. DMV investigators recovered the vehicle at the repair shop in February 2009. DMV investigators contacted the Department of Insurance upon finding the vehicle, and CDI immediately launched an investigation.

This case is being prosecuted by the San Diego County District Attorney's Office.

Commissioner Poizner oversees sixteen CDI Enforcement Branch regional offices throughout the state. Close to 1900 insurance fraud-related arrests have been made by the Department of Insurance's Enforcement Branch since Commissioner Poizner took office in 2007 - more arrests than have been made during any other two year period, under any previous insurance commissioner.

PRESIDENT'S MESSAGE

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subject of property claim. We also must be ready to deal with policies written for personal lines, industrial risks, specialty commercial risks, professionals, educational or medical institutions, builders' risk, and much more.

All independents apply knowledge that resembles that of an engineer, an attorney, an accountant and a salesman. We document, investigate, evaluate, litigate, and generally relate to potentially any member of society. Did you ever have to explain co-insurance to a truck repair shop owner?

By the way, do you run your own business? Now you are also the controller, accountant, purchasing agent, president, human resources director, sales and marketing director, and chances are you vacuum the floor occasionally as well.

I often wish people knew more about what we do. When I go to a party, a stranger will ask what I do for a living, and I say "insurance adjuster", and they get that look that says, "insurance, how boring", or worse yet, that guy that once handled claims, and is now the VP of some department thinks less of me because he is up there in management, and all I do is "field work". These people can't know or have forgotten how much fun we have.

Being an I.A. requires flexibility and experience. Diversity is our trade. We need to help the insurance industry to recognize the concentration of talent centered in our profession.

PETE VAUGHAN

President - CAIA 2008-2009

Insurance Law Bulletin

Submitted by Smith, Smith & Feeley, LLP - Irvine CA

Delays in Handling Fire Claim Support Award for Emotional Distress, Attorney's Fees and Punitive Damages

The California Court of Appeal has held that evidence of delays in handling a fire claim was sufficient to support a substantial award for emotional distress, attorney's fees and punitive damages. (*Major v. Western Home Ins. Co.* (2009) 2009 WL 26744)

Facts

Patrick and Elsa Major owned a residence and personal property, which they insured through Western Home Insurance Company. After a wildfire destroyed their property, the Majors submitted a claim to Western Home.

At the time of the fire, the policy provided stated limits of \$193,000 for the dwelling, \$19,300 for other structures, \$135,100 for personal property and \$38,600 for living expenses. However, the policy also included extended replacement cost coverage up to 25 percent over the stated policy limits, meaning the policy, as written, actually provided coverage up to \$241,250 for the dwelling, up to \$24,125 for other structures, up to \$168,875 for personal property, and up to \$48,250 for additional living expense.

As a condition to recovering extended replacement cost coverage, Western Home required that, at the inception of the policy, the dwelling coverage limits be equal to the cost to replace the house. To ensure the limits were adequate, the policy required an inspection of the dwelling and a report specifying the dwelling's replacement cost. However, Western Home did not send an inspector until after the policy was issued and the coverage limits set. The inspection report identified the replacement cost as \$235,578 (i.e., substantially more than the stated \$193,000 dwelling coverage limit). Based on this valuation, the extended replacement cost coverage for coverage A should have been \$305,216 for the dwelling, \$30,522 for other structures, \$213,651 for personal property, and \$61,043 for additional living expense.

Western Home used an independent adjusting firm to handle the Majors' fire claim. The evidence established that Western Home had retained the independent adjusting firm to handle a significant aspect of Western Home's business. The evidence also established there was no day-to-day oversight of the adjusting firm's claims supervisor and that the supervisor exercised substantial discretionary authority to pay or not pay claims. In addition, the supervisor managed 35 employees in an office that handled claims across the country.

The independent adjusting firm assigned the claim to an adjuster, and later re-assigned the claim to a second adjuster. At the time of the re-assignment, the second adjuster had not received the training required by California's Fair Claims Settlement Practices Regulations, and was handling over 200 other claims (which his own manager admitted was "way too many"). Several months after the file was re-assigned to the second adjuster, he told the Majors he had not reviewed their file and told them their claim was "third in his stack." He also told the Majors on at least three occasions their claim was not his top priority. The adjuster also failed for months to review the Majors' 77-page personal property claim, which at that time was the most significant unpaid portion of their claim. Eventually, the independent adjusting firm's supervisor assumed direct handling of the file.

About one year after the fire, the Majors became "exhausted" by their own efforts to resolve the claim and, therefore, they retained an attorney. After the Majors retained counsel, Western Home's vice president of claims reviewed the underwriting inspection report for the Majors' dwelling and noted that it showed a replacement cost (\$235,578) for the Majors' house that was significantly higher than the \$193,000 stated limit for the dwelling. He thereafter authorized what Western Home characterized as a "courtesy" increase in the policy limits to correspond to the replacement cost set forth in the inspection report. With this adjustment, the extended replacement cost amount for personal property increased from \$168,875 to \$213,651.

Later, the Majors submitted receipts apparently totaling \$31,359.55 for personal property they had replaced. Because the extended replacement cost limit had been increased to \$213,651, there were sufficient policy limits remaining to pay the supplemental personal property claim of \$31,359.55. However, independent adjusting firm's supervisor did not authorize payment of this supplemental amount, claiming that the receipts had been transmitted via facsimile and were illegible, and also asserting that the receipts were not marked so that they could be cross-referenced to the original personal property inventory.

The Majors ultimately sued Western Home. At trial the supervisor admitted that the personal property replacement receipts that allegedly had been faxed and allegedly were illegible actually had been mailed and were legible. The supervisor also admitted that the policy did not specifically require that the replacement receipts be marked so that they could be cross-referenced to the original personal property

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Insurance Law Bulletin

Submitted by Smith, Smith & Feeley, LLP - Irvine CA

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inventory.

The jury awarded the Majors \$1,316,831.08 (\$31,359.55 for the personal property the Majors had replaced, \$450,000.00 for emotional distress, \$189,000.00 for Brandt attorney fees, and \$646,471.53 for punitive damages).

On appeal, Western Home contended that the \$31,359.55 the jury awarded for personal property was improper. More specifically, Western Home contended that, prior to the trial, Western Home already had paid \$168,875 for personal property (the original extended replacement cost limit for personal property). Western Home argued that its "courtesy" decision to adjust the extended replacement cost personal property policy limits from \$168,875 to \$213,651 was not a binding modification of the policy because it was not supported by consideration. As such, Western Home argued, it was not obligated to pay the \$31,359.55 for the personal property replacement cost claim.

Holding

The Court of Appeal rejected Western Home's argument that the adjustment of the policy limits was a "courtesy" decision instead of a legally binding modification of the policy. The Court noted that the extended replacement cost coverage was available to the Majors only if they allowed Western Home to adjust the Coverage A limit of liability and premium in accordance with property valuations that Western Home itself established. Thus, the Court concluded

that the trial court and jury reasonably could have concluded the policy had been modified by Western Home to comply with the original terms of the policy, and thus no new consideration was necessary to support the modification.

The Court of Appeal also found that the evidence was sufficient to support the \$450,000.00 award for emotional distress, the \$189,000.00 award in Brandt attorney fees and the \$646,471.53 in punitive damages. In particular, the Court of Appeal ruled the evidence was sufficient to support a finding that the independent adjusting firm's supervisor was a "managing agent" such that Western Home was liable for punitive damages stemming from the supervisor's action in handling the claim.

Comment

Because the Majors were the prevailing parties in the trial court, the Court of Appeal disregarded the evidence favorable to Western Home and instead focused on the evidence favorable to the Majors. Based on the evidence, the jury apparently found that the independent adjusting firm was simply too overwhelmed with other claims to properly handle the Majors' claim. The Court of Appeal also found that the independent adjuster's supervisor qualified as a "managing agent" and that Western Home therefore was liable for punitive damages based on the supervisor's conduct.

NEW BOARD MEMBER

Kearson Strong of
Claims Consultants Group, Fresno,
is our newest member of the Board.

The CAIIA is fortunate to have such a
great membership from which to
choose the Board members.

You can contact Kearson at
kearson@claimsconsultantsgroup.com.

The Board welcomes her.

SEMINARS FOR THE EVALUATION OF EARTHQUAKE DAMAGES (SEED)

The SEED are scheduled for
June 16, 2009, in Pomona, CA
and **June 23, 2009**, in Pleasanton, CA.

Please check next month's
Status Report or at caiia.com
for the application.

The California Department of
Insurance has granted 8 hours of con-
tinuing education for this course.

Insurance Law Bulletin

Submitted by Smith, Smith & Feeley, LLP - Irvine CA

“Professional Services” Exclusion Does Not Relieve General Liability Insurer of Duty to Defend Insured Consultant Against Claims Arising From Injury to Worker at Job Site

The California Court of Appeal has held that a “professional services” exclusion did not relieve a general liability insurer of the duty to defend its insured, a consulting firm, against claims arising from injuries to a worker at a jobsite where the insured was providing consulting services. (*Food Pro International, Inc., v. Farmers Ins. Exchange* (2008) 2008 WL 5401336)

Facts

Mariani Packing Company (Mariani), a fruit processing company, decided to move its operations from an old plant in San Jose to a new plant in Vacaville. In order to assist in the relocation, Mariani hired Food Pro International, Inc. (Food Pro), a consulting firm that prepares and implements plans for food processing operations. Among other things, the contract between Mariani and Food Pro required that Food Pro would coordinate the movement of food processing equipment from Mariani’s old plant in San Jose to its new plant in Vacaville. The contract did not require Food Pro to provide a safe work place for workers.

Mariani itself hired the contractors that physically moved the equipment. In the course of moving a piece of equipment, Mariani’s mechanical contractor left a large hole in the second floor of Mariani’s old plant in San Jose. Food Pro personnel saw the hole and suggested that Mariani employees cover it, but Mariani employees failed to do so.

One week later, Mariani’s electrical contractor sent several employees to Mariani’s old plant in San Jose in order to disconnect some equipment. In the process of that work, one of the electrical contractor’s employees, Roy Pettigrew (Pettigrew), fell through the hole in the second floor of the San Jose plant and suffered serious injuries. At the time of Pettigrew’s accident, Food Pro personnel were present at Mariani’s San Jose plant, supervising the “overall process” of moving the equipment. However, Food Pro personnel did not have a contractual obligation to ensure safety conditions at the site.

The injured worker, Pettigrew, filed a personal injury lawsuit against Food Pro. In addition, Pettigrew’s employer’s workers compensation insurer, Explorer Insurance Company (Explorer), filed a subrogation lawsuit against Food Pro in order to recover the amount of workers compensation benefits that Explorer had paid to Pettigrew. Pettigrew and Explorer both alleged that Food Pro had negligently failed to cover the hole through which Pettigrew fell and/or negligently allowed Pettigrew to work near the hole.

Food Pro tendered both lawsuits to its general liability in-

surer, Farmers Insurance Exchange (Farmers). The Farmers general liability policy contained an endorsement labeled “Exclusion - Engineers, Architects or Surveyors Professional Liability.” It barred coverage for bodily injury “arising out of the rendering or failure to render any professional services by or for you, including: [1.] the preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs, specifications; and [2.] supervisory, inspection or engineering services.” Relying on this “professional services” exclusion, Farmers refused to defend Food Pro against the lawsuits filed by Pettigrew and Explorer.

Pettigrew and Explorer later obtained default judgments totaling over \$1.7 million against Food Pro. Food Pro tendered the judgments to Farmers for payment, but Farmers refused to pay.

Food Pro then filed a breach of contract / bad faith lawsuit against Farmers, alleging that Farmers had wrongfully failed to defend and indemnify Food Pro in the underlying lawsuits brought by Pettigrew and Explorer. The trial court ruled that Farmers’ “professional services” exclusion applied, and that Farmers thus had no duty to defend or indemnify Food Pro in the underlying lawsuits. Food Pro appealed.

Holding

The Court of Appeal reversed, holding that Farmers’ “professional services” exclusion did not relieve Farmers of a duty to defend Food Pro in the underlying lawsuits. The appellate court agreed that Food Pro, in coordinating the movement of Mariani’s equipment, was providing “professional services” to Mariani. However, according to the appellate court, Food Pro’s professional services to Mariani “did not extend to the creation of the hole, the safety of the site, or the direction of Pettigrew....” Thus, according to the appellate court, Food Pro’s alleged liability in the underlying lawsuits arose from Food Pro’s “ordinary negligence,” and not from its “professional services.” As such, Farmers’ “professional services” exclusion did not apply and Farmers was therefore obligated to defend Food Pro in the underlying lawsuits.

Comment

The result in this case seems debatable. The Farmers policy excluded coverage for bodily injury “arising out of” (i.e., flowing from) Food Pro’s rendition of “professional services” (i.e., skilled services). “But for” the fact that Food Pro was performing “professional services” for Mariani in the first place, Food Pro would never have had any involvement in the Mariani project, and thus Food Pro would never have faced any liability for the injury to Pettigrew. In this sense, it can be said that Food Pro’s alleged liability for Pettigrew’s injury did in fact “arise out of” (flow from) Food Pro’s rendition of “professional services” (skilled services) for Mariani.



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

Different Ways of Looking at Things (*Or the uncertainty of the English language*)

Two guys were discussing popular family trends on sex, marriage, and family values. Stu said, "I didn't sleep with my wife before we got married, did you?" Leroy replied, "I'm not sure, what was her maiden name?"

A little boy went up to his father and asked: "Dad, where did my intelligence come from?" The father replied, "Well son, you must have got it from your mother, 'cause I still have mine."

"Mr. Clark, I have reviewed this case very carefully," the Divorce Court Judge said, "and I've decided to give your wife \$775 a week." "That's very fair, your honor," the husband said. "And every now and then I'll try to send her a few bucks myself."

A doctor examining a woman who had been rushed to the Emergency Room, took the husband aside and said, "I don't like the looks of your wife at all." "Me neither doc," said the husband, "but she's a great cook and really good with the kids."

An old man goes to the Wizard to ask him if he can remove a curse he has been living with for the last 40 years. The Wizard says, "Maybe, but you will have to tell me the exact words that were used to up the curse on you." The old man says without hesitation, "I now pronounce you man and wife."

Two reasons why it's so hard to solve a Redneck murder:

1. The DNA all matches. 2. There are no dental records.

A blond calls Delta Airlines and asks, "Can you tell me how long it'll take to fly from San Francisco to New York City?"

The agent replies, "Just a minute." "Thank-you," the blond says, and hangs up.

Two Mexican detectives were investigating the murder of Juan Gonzales. "How was he killed?" asked one detective. "With a golf gun," the other detective replied. "A golf gun! What is a golf gun?" asks the first detective. The second detective replies, "It's the kind that made a hole in Juan."

Moe: "My wife got me to believe in religion."

Joe: "Really?"

Moe: "Yeah. Until I married her I didn't believe in Hell."

A man is recovering from surgery when the Surgical Nurse appears and asks him how he is feeling. "I'm O.K., but I didn't like the four letter words the doctor used in surgery," he answered. "What did he say?" asked the nurse. The man replies, "Oops!"

While shopping for vacation clothes, my husband and I passed a display of bathing suits, It had been at least ten years and twenty pounds since I had even considered buying a bathing suit, so sought my husband's advice. "What do you think?" I asked. "Should I get a bikini or an all-in-one?" "Better get a bikini," he replied. "You'd never get it all in one."