CAIIA Status Report

MAY 2008

DOUG JACKSON

Adjuster Of The Year

Doug Jackson,
Southwest Claims Service, Simi Valley, CA,
is receiving the
2008 Claims Magazine
Claims Professional of the Year
at the upcoming ACE Conference.

Doug is a Past President of the CAIIA.

Currently he is President of the
Registered Professional Adjuster organization.

Doug richly deserves this award.

All of us in the CAIIA and the Status Report
send our heartfelt congratulations to Doug
on this lofty achievement.

EDITOR'S NOTE

In our March issue, The Status Report re-printed an article from the Law firm of McCormick and Barstow, Fresno, CA, discussing a recent Court of Appeal decision. In *Beltz v Clarendon American Insurance Company*, it states in essence that a carrier must show how it is prejudiced, when an insured fails to notify the carrier of the suit and the suit goes to default, before the carrier can decline coverage based on no notice of the lawsuit to the carrier. Robert Kester of Chamberlin, Keaster and Brockman, Encino, CA, sent us an email advising that The California Supreme Court has denied the petition for review and denied the request to de-publish the opinion. Therefore, it is now "good law" in the state. Editor

PUBLISHED MONTHLY BY
California Association of
Independent Insurance Adjusters

An Employer
Organization of
Independent
Insurance Adjusters

Inside This Issue

***Status Report* Now Available by E-mail**

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PRESIDENT'S MESSAGE

Our midterm convention in Las Vegas was very enjoyable. I thank all of the members who participated and made it so.

After dinner on Thursday night we made a journey to a jazz club owned by former CAIIA president Bob Gresham. Bob certainly looked well; it was nice to see that there can be life after claims adjusting.

I am a bit disappointed that I was so busy I never gambled even a dollar - truthfully. However, since the association is just in the process of obtaining D & O insurance, it is probably best that my scheme to use funds from the treasury as my stake didn't come to fruition.

I encourage all of the membership to attend our meetings. While one of the main purposes of the meetings is to conduct business, I always find myself leaving meetings with a renewed appreciation for the relationships I have made with my fellow adjusters. I hope some of the friendships long follow my time on the Board.

One of my goals is to see how the CAIIA can create business opportunities for its members at the time of catastrophes. As many of you know from a recent email I sent out, one of our former Board members, Frank Zeigon, has agreed to assist in compiling members thoughts on the subject for future action. Please contact Frank if you have any ideas.

Additionally, members will soon see our internal management survey in their mailbox. The survey includes a question on CAT capabilities. Please respond to the survey; the survey is only meaningful if all members respond.

Jeff Stone will be looking for volunteers to assist with the Golf Tournament on October 20th. This is a great way to get involved with the Association, see all of the attendees, and enjoy the festivities. Please contact Jeff if you are interested.

As I write this message the Dodgers are in first place. If by some miraculous chance they win the World Series, I plan to beg Pete Vaughan to let me write his messages so I can to keep the mojo alive.

If you have any suggestions, questions or just want to say hello, please don't hesitate to call or email me.

PETER SCHIFRIN
President - CAIIA 2007-2008

Coverage Alert

Submitted by McCormick Barstow, LLP - Fresno, CA

Underinsured Motorist Coverage - Exhaustion Rule

Lowell R. Wedemeyer v. Safeco Insurance Company of America, (March 13, 2008), Court of Appeal, Second District

The triggering of an obligation to pay by an underinsured motorist carrier becomes more complicated when there are multiple policies available to the tortfeasor. This case of first impression discusses if underinsured motorist carrier is triggered when the tortfeasor's auto liability limits are paid, or only when the limits of all available coverage are paid.

Lowell Wedemeyer was insured by Safeco Insurance Company with underinsured motorist limits of $500,000 per person and per accident. On May 28, 2003, he was hit from behind by a vehicle driven by Bradley Dean Groscost. Groscost was insured by Coast National Insurance Company in the amount of $15,000. Wedemeyer sued Groscost. Coast tendered the $15,000 in exchange for a general release. Groscost was employed by Skyline Management Group. Skyline was insured by Hartford Insurance Company under a general liability policy. The policy included hired and non-owned auto liability coverage of $1 million. Hartford refused to admit coverage under its policy for the accident. Wedemeyer therefore demanded that Safeco pay him $485,000, the difference between his underinsured motorist limits and the $15,000 offered by Coast. Safeco refused, insisting that the policy limits of Hartford be exhausted. Wedemeyer eventually settled with Groscost in exchange for the $15,000 Coast policy limit and $500,000 under the Hartford policy.

Wedemeyer sued Safeco for breach of contract and breach of the covenant of good faith and fair dealing. Safeco moved for judgment on the pleadings on the basis that all policies covering the driver had to be exhausted before underinsured motorist coverage was triggered. The trial court granted the motion.

On appeal to the Court of Appeal, the judgment was reversed. The Court stated underinsured motorist coverage requires exhaustion of the tortfeasor's policy limits and proof of payment to the underinsured motorist carrier. Wedemeyer argued that the exhaustion required him only to exhaust automobile liability policies, and not other policies that provided coverage. Skyline's Hartford policy was not a motor vehicle liability policy. It was a general liability policy that include hired auto and non-owned automobile liability coverage in the sum of $1 million. The Court agreed that the Hartford policy did not fall within the definition of a motor vehicle bodily injury policy. Thus, Safeco's obligation was triggered upon payment of the Coast policy.

As to the amount recovered from Hartford, the Court stated an insurer making payment under the underinsured motorist provisions of the policy is entitled to reimbursement or a credit from the insured for that payment. Thus, when the Coast policy was exhausted, Safeco was liable for the difference between the underinsured motorist limit and the Coast limits. As to the amount received from the Hartford policy, Wedemeyer was required to reimburse Safeco for the amount received from the Hartford policy.

Thus, the court concluded that once a motor vehicle or automobile bodily injury liability policy has been exhausted, underinsured motorist is triggered. Thus, the claim for relief was stated. The court erred in granting a judgment on the pleadings. The judgment was reversed.

COMMENT

The area of law concerning exhaustion of limit is unclear and requires further clarification by either the courts or the Legislature. This is the first case we know of to adopt this interpretation.

Duty to Defend - Sexual Battery

Stephen J. Lyons v. Fire Insurance Exchange, (March 7, 2008), Court of Appeal, Second District

While the duty to defend is broad, there are instances where it can be declined. This case deals with an alleged sexual attack and false imprisonment where coverage was sought under a homeowners policy.

Stephen Lyons, a former TV broadcaster for the Los Angeles Dodgers, met Stacey Roy while both were vacationing in Hawaii. Lyons followed Roy in the elevator to the floor of her hotel room and took her by the wrist to a hallway alcove, where he asked her to expose her breasts. She declined to do so. She later complained of a sexual attack, which Lyons denied. Roy sued Lyons for the alleged sexual attack, including a cause of action for false imprisonment. Lyons tendered the defense to Fire Insurance Exchange. Fire Insurance Exchange denied coverage and refused to defend. Lyons settled Roy's claim and then sued Fire Insurance Exchange for bad faith. The trial court granted summary judgment in favor of Fire Insurance Exchange. Lyons appealed.

The Court of Appeal affirmed. The Court noted the homeowners policy issued by Fire Insurance Exchange provided liability coverage for bodily injury or personal injury resulting from an occurrence. The policy defined an occurrence as "an accident." The Court noted that the accident limitation applied to both bodily injury and personal injury claims, such as false imprisonment. Thus, false imprisonment was covered only to the extent it was an "accident."

Under any view of the underlying events, the Court held the false imprisonment was no accident. A false imprisonment is

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a non-consensual, intentional confinement of a person without lawful privilege for an appreciable period of time, however brief. There can be negligent acts that give rise to false imprisonment, but in this case, they did not exist. Both parties agreed Lyons grabbed Roy's wrist in the context of a sexual advance, that she did not consent, and that his conduct restrained her. This was deliberate and intentional. Further, the sexual advances were not accidental.

Lyons argued that he did not believe Roy would rebuff his advances. He therefore contended the incident was an accident. The Court stated "accident" refers to the nature of the conduct, not the state of mind of the actor. Here, the conduct was not engaged in by accident. Mistaken consent did not create an accident. Regardless of his misperception of consent, Lyons intended his sexual advance and the accompanying unwanted detention that was the subject of Roy's claims.

Since the intentional conduct by Lyons arose from a single incident, and there was no accident, there was no potential for coverage. Thus, there was no duty to defend. It was held that the Court properly granted summary judgment and judgment in favor of Fire Insurance Exchange was affirmed.

COMMENT

In cases such as this where there is no dispute regarding the allegations against the insured, a determination of the duty to defend can be made as a matter of law. Unfortunately, most situations are not this clear.

Torts - Proposition 51 - Jury Can Consider Whether Hospital Shares Fault For Plaintiff's Aggravated Injuries

Henry v. Superior Court, (February 5, 2008), Court of Appeal, Second District

California courts have traditionally held that when a plaintiff suffers personal injuries by reason of the tortious act of another, and then has his or her injuries aggravated by negligence of a doctor, the original tortfeasor has been held to be a proximate cause of the damages flowing from the subsequent medical treatment. The interesting question in this case is whether this rule conflicts with the principles of Proposition 51 (California Civil Code section 1431.2), which sets forth that the liability of each defendant shall be several and not joint, when considering an award of non-economic damages.

Plaintiff Larry Reinink was hired by Defendants Joe and Judy Henry to clean and repair their swimming pool. As Reinink was leaving the job, he tripped on a concrete step and injured his shoulder. Reinink was treated at Kaiser Hospital, where he subsequently underwent multiple shoulder surgeries. Reinink filed a complaint against the Henrys alleging that the pool area constituted a dangerous condition. Reinink did not sue Kaiser. The Henrys did not cross-complain against Kaiser. When the case proceeded to trial, the Henrys sought to argue that physicians at Kaiser aggravated the original injury, and that Kaiser's medical negligence should be considered by the jury. The trial court rejected the request. The Henrys then filed a petition for writ of mandate and sought an immediate stay of the trial. The Second District Court of Appeal agreed to hear the matter and ultimately granted the petition.

The critical issue for the Court of Appeal was whether the Henrys, under Proposition 51, should be entitled to introduce evidence of Kaiser's negligence to limit their liability for non-economic damages to their percentage of fault. Reinink argued that joint and several liability depends on the existence of an "indivisible" injury caused by multiple tortfeasors; as opposed to two separate and distinct physical injuries.

The Court of Appeal disagreed holding that a plaintiff's injuries need only be causally interrelated, not "physically inseparable." For the Second District, it was important that Reinink's original injury and the aggravation of the injury each be analyzed by the jury. The Court held that liability for each indivisible component should be considered seperately. If the Henrys were solely responsible for the initial injury, the jury's award should reflect it. If, however, the aggravation was caused by Kaiser, Proposition 51 calls for the jury to apportion fault in accordance with the rules of comparative fault and Proposition 51.

Reinink also contended that Kaiser's alleged negligence would be "imputed" or "derivative", and therefore, outside the rules for several liability adopted by Proposition 51. The Second District rejected this argument. For the Court, Kaiser's negligence was alleged to be direct, not vicarious or derivative in some way. Thus, the fault of the original tortfeasor, as well as the subsequent tortfeasor should be evaluated and compared by the jury. For these reasons, the Court granted the writ petition and the trial court was directed to vacate its' order excluding evidence of subsequent negligence by Kaiser.

COMMENT

This is an important ruling for Defendants in actions involving aggravation of injuries. Under the principles of Proposition 51, a jury should consider the culpability of all tortfeasors. A defendant is entitled to reduce his or her exposure to non-economic damages by proving that a subsequent tortfeasor shares fault for aggravating injuries suffered by a plaintiff.

When You Need to Know What Really Happened

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

A Slip and Fall

At approximately 1:00 am, a patron and his three companions left the Un-named Karaoke Bar & Restaurant. The patron reportedly slipped and fell on the painted concrete area outside the entrance, falling forward and hitting his face on the concrete, incurring considerable dental damage in the incident. Further, one of his companions also slipped on that same surface, just prior to his fall.

Garrett Engineers, Inc. was assigned to review photographs of the location and other documents, including the claimant's statement, to examine the site, and perform a safety analysis, including an evaluation of the slipperiness of the walkway surface in that area.

Our expert received and reviewed the appropriate documents. He then researched the weather conditions for the approximate date of loss. The weather reports indicated that the maximum temperatures for the days before and after the incident were approximately 90 degrees and the minimum temperatures were in the middle 50 degree range. The dew point on both days was considerably lower than the minimum temperature. Therefore there would not be any presence of dew on the walkway surface, even at 1:00 am.

Our expert then examined, tested and photographed the site in question. The appearance of the area agreed with the photographs provided by the client. He selected four areas over the general painted concrete area and measured the slip resistance at each spot, each in the four cardinal directions, using an English XL Slipmeter to determine the slipperiness. Measurements were made at each location under both wet and dry conditions.

No single test yielded an anti-slip reading below .65 when dry and below .55 when wet. When dry, the average readings varied from .70 to .80 and when wet the average readings varied from .59 to .66. It is generally accepted that readings above .50 indicate a walkway surface that is safe with respect to slipperiness. In this case all reading were well above the .50 criteria.

The slopes at various areas were measured and varied from 1.5 degrees to 4 degrees, which are acceptable slopes for pedestrian walkway surfaces.

The conclusion was that a dangerous walkway surface was not the cause of the patron's injuries.

The patron reportedly fell on his face, but his statement also reported that the fall that he had suffered when he was injured occurred when he was trying to get up after falling a first time. Typically, a person slipping and falling does not fall forward in a normal slip and fall incident. He falls backwards in a slip and he falls forward in a trip.

There were no surveillance cameras. So what was the most likely scenario? The most likely scenario was that the patron tripped over his companion, and struck his face as the two of them were attempting to untangle their arms and legs, from each other, on the sidewalk, in the dark, after a late night at the bar.

Insurance Commissioner Poizner Announces Bay Area Fraud Sweep, Nearly One Dozen Fraud Perpetrators Arrested

CDI Investigation Discovers $2 Million in Cell Phones Scammed from Fraudulent Insurance Claims

SAN JOSE Insurance Commissioner Steve Poizner today announced the arrests of nearly one dozen alleged Bay Area fraud perpetrators. Eleven subjects were arrested over the last week on numerous felony counts including insurance fraud, identity theft, possession of stolen property, and filing a false tax return. Wireless phone dealers, employees and customers were arrested for their purported involvement in a $2 million insurance scam.

"When scam artists cheat the system, everyone suffers," said Commissioner Poizner. "Businesses that defraud insurance companies to earn an extra dollar are not playing fairly and are undermining the integrity of a free marketplace."

The California Department of Insurance (CDI) Fraud Division, with assistance from the California Highway Patrol and the Santa Clara County District Attorney's Office, launched investigations into several Bay Area cellular telephone stores in 2005 after insurance administrator Asurion Corporation (previously lock/line) reported suspected fraudulent claims. The CDI investigation revealed that Nikki Tang, 29, and Bao Vu Ha, 36, both of San Jose, the owners of Streetel One in San Jose, were engaging in dealer fraud. The investigation further revealed that store employee Xuan Tran, 50, and former store employee Natalie Huynh, 24, both of San Jose, also allegedly engaged in multiple counts of insurance fraud. Streetel One customers Douglas Duong, 40, and Khang Truong, 24, both of San Jose, were also arrested for their alleged involvement in insurance fraud.

Asurion Corporation administers wireless insurance protection plans which provide coverage for lost, stolen or damaged wireless phones. The administrator provides a replacement phone when an insurance claim is filed and approved.

Dealer fraud occurs when a customer purchases a policy on a wireless phone to cover against loss, theft or damage. After selling a wireless phone to a customer, a store employee, associate, or owner will file a claim with the insurance company for a lost or stolen phone. After the insurance company sends a replacement cellular phone, the dealer sells or gives away the replacement phone free to a new customer. This scheme is often repeated on new wireless phone accounts, without the original customer's knowledge that an insurance claim was made on his or her account. CDI's investigation uncovered approximately two million dollars worth of replacement wireless phones that were shipped out by Asurion as a result of this fraud scheme. This investigation continues and CDI expects to make more arrests.

The CDI investigation also revealed that Trina Nguyen, 25, of San Jose, former owner of EZ Wireless in San Jose was also allegedly involved in dealer fraud. Former employees of EZ Wireless, Gigi Nguyen, 32, and Jordan Pham, 35, both of San Jose were also arrested for their alleged involvement in insurance fraud, possession of stolen property and identity theft.

It was further discovered through the CDI investigation that Travis Tiet, 43, his brother Vincent Tiet, 45, and sisters Muoi Tiet, 51, and Khanh Tiet, 54, all of Oakland, were allegedly involved in multiple counts of insurance fraud and possession of stolen property. The Tiets owned and operated the now closed Voicetel Wireless and V-Wireless stores in San Jose, in addition to the Globotel cellular telephone store, currently known as V-Wireless in Oakland. Three of the siblings were arrested in Alameda County on April 2, while Khanh Tiet remains outstanding.

The Santa Clara County District Attorney's Office is prosecuting this case. If anyone has additional information in regards to this investigation, or feels they have been a victim of insurance fraud related to a cellular telephone store, they should call the Department of Insurance at 1-800-927-HELP.

CAIIA 2008 Educational Events

As an authorized California DOI education provider (CDI# 20638), the CAIIA will be presenting its annual Fair Claim Settlement Practices Regulations (**FCSPR**) seminars and, at two of the locations, we will also be offering SEED (Seminar for the Evaluation of Earthquake Damage) program seminars. The SEED program addresses the training and certification required by CCR, Title 10, Chapter 5, Subchapter 7.5.1, Article 1, Section 2695.40 through Section 2695.45. Those regulations set forth the requirements of Insurance Adjuster Training for Evaluating Earthquake Damage. We will also be providing SIU Regulations certification at the SEED locations.

At locations in Fresno (6/13/08), Glendale (6/24/08), Redding (6/11/08), and San Diego (6/3/08), we will be offering only the FCSPR seminars.

In Lake Tahoe (5/23/08) and Diamond Bar (6/17/08) we will be offering both the FCSPR and SIU seminars plus the SEED program seminar.

The Lake Tahoe Seminar is co-sponsored by the Northern Nevada Claims Association. The Diamond Bar Seminar is co-sponsored by the Inland Empire Claims Association.

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

Name_____

Co._____

Address_____

City_____ Zip_____

Phone_____

E-mail Address: _____

Fees (circle one): Reg's Only SEED

CAIIA Member fee	$40.00	$ 90.00
Ins. Co. Employee fee	$50.00	$100.00
Non-Member I/A fee	$60.00	$160.00*

Amount Enclosed - $_____

Payment must accompany registration.

Credit Card Pymt: Am Ex__Visa__ M/C _____

Ex. Date:_____ Cardholder:_____

Card No:_____

Signature:_____

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

CAIIA c/o Peter Schifrin
Schifrin, Gagnon & Dickey, Inc.
9255 Corbin Avenue
Suite 200
Northridge, CA 91324

Questions? Call Peter Schifrin @ (818) 734-0215

Schedule for all locations:

Registration	8:00 a.m. to 9:00 a.m.
FCSPR & SIU Seminar	9:00 a.m. to 10:15 a.m.
SEED Seminar	10:30 a.m. to 5:00 p.m.

FCSPR, SIU & SEED SEMINARS

_____**May 23, 2008**
Lake Tahoe: Inn by the Lake
South Lake Tahoe, CA

_____**June 17, 2008**
Diamond Bar: Holiday Inn Select
21725 E. Gateway Ctr.

FCSPR ONLY SEMINARS:

_____**June 13, 2008**
Fresno: Ramada Inn
324 E. Shaw Ave.

_____**June 24, 2008**
Glendale: Carl Warren
500 N. Central, 4th Fl.

_____**June 11, 2008**
Redding: Swanson & Assoc.
375 Smile Place

_____**June 3, 2008**
San Diego: Servicemaster
6975 North Ave, Ste. B
Lemon Grove

Please visit **www.caiia.com** for more information.

**CAIIA will agree to offset any membership dues for Non-CAIIA Independent Adjusting Firms joining the CAIIA within 30 days, up to $80.00 total for each adjuster attending with a cap of $160.00.*

Kids . . . . This is so funny!!!

A 1st grade school teacher had twenty-six students in her class. She presented each child in her class room the 1st half of a well-known proverb and asked them to come up with the remainder of the proverb. It's hard to believe these were actually done by first graders. Their insight may surprise you. While reading, keep in mind that these are first-graders, 6-year-olds, because the last one is a classic!

1. Don't change horses . . . . until they stop running.
2. Strike while the . . . . the bug is close.
3. It's always darkest before . . . . Daylight Savings Time.
4. Never underestimate the power of . . . . termites
5. You can lead a horse to water but . . . . How?
6. Don't bite the hand that . . . . looks dirty.
7. No news is . . . . impossible.
8. A miss is as good as a . . . . Mr.
9. You can't teach an old dog new . . . . Math.
10. If you lie down with dogs, you'll . . . . stink in the morning.
11. Love all, trust . . . . me.
12. The pen is mightier than the . . . . pigs.
13. An idle mind is . . . . the best way to relax.
14. Where there's smoke there's . . . . pollution.
15. Happy the bride who . . . . gets all the presents.
16. A penny saved is . . . . not much.
17. Two's company, three's . . . . the Musketeers.
18. Don't put off till tomorrow what . . . . you put on to go to bed.
19. Laugh and the whole world laughs with you, cry and . . . . you have to blow your nose.
20. There are none so blind as . . . . Stevie Wonder.
21. Children should be seen and not . . . . spanked or grounded.
22. If at first you don't succeed . . . . get new batteries.
23. You get out of something only what you . . . . see in the picture on the box.
24. When the blind lead the blind . . . . get out of the way.
25. A bird in the hand . . . . is going to poop on you.

And the winner and last

26. Better late than . . . . pregnant.