

# CAIIA *Status Report*

JUNE 2008

## Jennifer Smith Receives Steve Tilghman Scholarship



The CAIIA is pleased to announce that Jennifer Smith of AIMS, Anaheim, CA, is the first recipient of the Steve Tilghman Scholarship.

Jennifer told the committee that she is seeking to begin her career in general studies at the Insurance Institute of America.

The CAIIA is proud to help Jennifer in furthering her education. The CAIIA is active in education throughout the year. This is another example of how the CAIIA helps those in the Insurance Industry.

## CAIIA Golf Tournament

The 2nd Annual  
**CAIIA Golf Tournament**

is scheduled for  
**October 20, 2008,**

at the  
**Napa Valley Country Club**

in the beautiful  
Napa Valley, California.

Contact Jeff Stone at 951-371-8845  
or [jeffstone@stoneadjusting.com](mailto:jeffstone@stoneadjusting.com)  
for tournament details and sponsorships.

*Last year was a sell out, so start early.*



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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](mailto:info@caiiia.org).

### CAIIA Newsletter

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## PRESIDENT'S MESSAGE

This being June, we are in the midst of our main 2008 Educational events. If you need recertification in the Earthquake or Fair Claims Settlement Practices Regulations, please visit [www.caiaa.com](http://www.caiaa.com) and download the registration form.

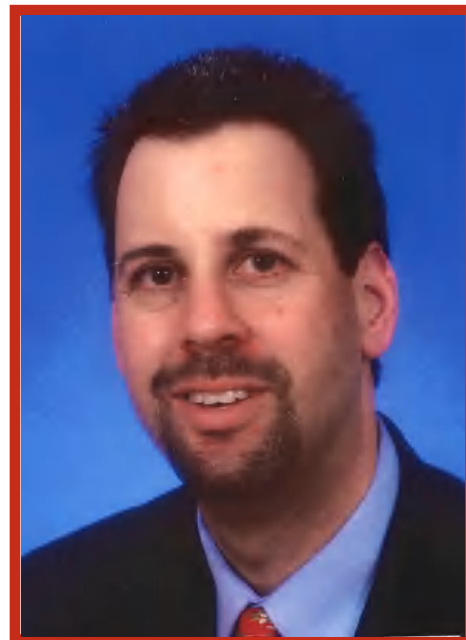
There are several CAIIA members who annually donate their time to serve as instructors. These fine gentlemen include Paul Camacho, Sterrett Harper, Doug Jackson, Richard Kern, John Swanson, and Steve Wakefield.

Some of them may be tiring of the accolades and groupies. If you are interested in serving as a presenter, please contact Pete Vaughan, who will be responsible for filling the instructor slots in 2009.

The CCNC is earlier than usual this year, to be held in Sacramento in July. Please contact Sterrett Harper if you can spend a couple hours at the CAIIA booth.

By now all of you should have received the 2008 Membership Directory. If not, or if you need more, please email me. The Directory can also be downloaded at the CAIIA website.

I want to offer a special apology to Jenee' Child of Sequoia Insurance Professionals, Inc. A couple items of her company's information are incorrect in the Directory. While the Directory Committee aims for 100% accuracy, an item



or two always seems to fail to be updated. With the help of our members, the CAIIA website is the most up to date source of member data.

We have awarded our first Steven Tilghman Educational Scholarship to Jennifer Smith of AIMS. If you know anyone who could benefit from funds to help pursue their insurance education, please have them download the application from the CAIIA website.

Lastly, it seems my last mention of the Dodgers sent them into a tail spin, so I am being sure to say nothing about the Lakers.

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

## Where evidence established that an insured willfully lied to his insurer during a claim investigation with respect to facts material to the investigation, the insurer properly disclaimed coverage

*Herbert v. State Farm Mut. Auto. Ins. Co.*, \_\_\_ F.Supp \_\_\_ (N.D.Cal. 2008)

### BACKGROUND FACTS

Roderick Herbert purchased a motorcycle insurance policy from State Farm for his 2002 Harley Davidson. The policy included a concealment or fraud clause providing that there would be no coverage if the insured misrepresented facts in connection with a claim under the policy. Herbert subsequently reported the theft of his motorcycle to State Farm. State Farm took Herbert's recorded statement over the phone. He was asked if he had ever been charged with or convicted of a misdemeanor or felony. Herbert led State Farm to believe that his criminal record consisted only of juvenile adjudications. When asked if he had ever had a vehicle stolen before, Herbert indicated that he had a Navigator which had been stolen but was later recovered.

When State Farm conducted a claim search, it found that Herbert had three prior auto theft claims. State Farm also obtained Herbert's criminal record and learned he had pled nolo contendere to three counts of motor vehicle theft eight years ago and had received a 16 month prison sentence. State Farm conducted another examination of Herbert and again asked him about whether he had ever been arrested for a crime. Herbert indicated he had been arrested twice, once for drug possession and once for conspiracy or possession of stolen property. He claimed that he had been buying and selling cars and, when he tried to register one of them with the DMV, it turned out to have been stolen. He claimed that he did not remember his specific plea but that he did ten months in jail. When asked about the discrepancy between his testimony that day and prior communications with State Farm, Herbert simply said there had been a miscommunication. When asked about discrepancies regarding his vehicle theft history, Herbert stated that he and the claims adjuster were in disagreement and that he probably had just failed to go into sufficient detail.

Based on the foregoing information, State Farm's counsel recommended that State Farm deny Herbert's claim based on the policy's concealment or fraud clause. State Farm did so and Herbert filed suit alleging breach of contract and breach of the implied covenant of good faith and fair dealing. State Farm moved for summary judgment.

### THE COURT'S RULING

The court determined that there was no question of fact with

respect to Herbert making false statements that were material to State Farm's claim investigation. In addition, the court concluded there was no question of fact with respect to Herbert's knowledge that he was lying under oath when he failed to disclose his prior felony convictions and subsequent prison stay when questioned about his criminal history. The court concluded that no reasonable jury would believe that a mere eight years after conviction, Herbert had forgotten his period of imprisonment. As such, the court granted State Farm's motion for summary judgment on the breach of contract claim. With respect to Herbert's claim for breach of the implied covenant of good faith and fair dealing, the court concluded there was nothing in the record to suggest that State Farm's conduct with respect to its investigation was unreasonable and in bad faith.

### THE EFFECT OF THE COURT'S RULING

A carrier's denial of coverage is reasonable where the insured intentionally misrepresents facts relevant to a claim investigation and the policy includes a concealment or fraud clause.

## A duty to defend exists where allegations conflict with extrinsic evidence regarding whether an insured intended the cause of third-party property damage for purposes of determining if the alleged damage resulted from an "occurrence"

*McGranahan v. The Insurance Corporation of New York* \_\_\_ F.Supp. \_\_\_ (E.D. Cal. 2008)

### BACKGROUND FACTS

The Insurance Corporation of New York ("INSCORP") issued a Commercial General Liability policy to Jeff Stewart Drywall ("JSD"). The policy excluded property damage to "that particular part of the real property" on which the insured worked and "that particular part of the property that must be restored, repaired or replaced" because the insured incorrectly performed work on it. On or about May 16, 2002, JSD entered into a contract for the installation of drywall at a residential subdivision located in Ceres, California. The drywall was installed between December 2002 and January 2003, during which time the weather was frequently cold, damp and foggy, with occasional rain. According to JSD, the drywall was delivered to each home site where it was stacked and covered with a plastic tarp until installation. JSD maintained that before it could install the drywall in several of the homes, some of the sheets were either culled or replaced because they were wet. After the drywall was installed, JSD's work was inspected and approved. However, mold was subsequently discovered on some of the drywall which JSD then treated

*continued on page 4*

# Coverage Alert

Submitted by McCormick Barstow, LLP - Fresno, CA

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with bleach in an attempt to remediate the damage. The contractor subsequently initiated binding arbitration proceedings against JSD alleging breach of contract. INSCORP denied coverage on grounds that the installation of the moldy drywall was not an accident because JSD was aware of the mold problem prior to installation.

## THE COURT'S RULING

INSCORP contended that there was no potential coverage under the CGL policy because JSD intentionally installed wet or moldy drywall. Although, the complaint filed in connection with the contractor's arbitration action alleged that JSD "utilized mold-contaminated sheet rock," it did not allege whether such utilization was intentional or negligent. The factual issues as to whether JSD knew that the drywall was wet or moldy when installed merely placed in dispute whether JSD's actions would eventually be determined not to constitute an occurrence or to fall within one or more of the exclusions contained in the policy. Thus, following well established California law, the court determined that so long as the possibility of a judgment based on non-intentional conduct existed, there was a potential for coverage giving rise to a duty to defend.

INSCORP also contended that there was no potential for coverage based on the "your work" exclusion within the policy. However, the evidence indicated that some of the damage

alleged was to property other than the drywall. As such, the exclusion did not negate INSCORP's defense obligations under the policy.

Additionally, INSCORP argued that the exclusion for work not "completed" also applied. However, the court rejected that argument because JSD's work was inspected and approved after completion.

With respect to the duty to indemnify, as noted, the court found there existed triable issues of fact as to whether JSD had intentionally installed wet or moldy drywall. Thus, the issue of indemnity could not be decided on summary judgment.

Finally, the court concluded that the bad faith claim made by JSD against INSCORP was not barred by the statute of limitations. The court determined that the statute was tolled until final judgment and, as such, was not a proper ground for summary judgment.

## THE EFFECT OF THE COURT'S RULING

The relevant inquiry for purposes of determining if third-party property damage was caused by an "occurrence" within the meaning of a Commercial General Liability policy is whether the insured intended to perform the act directly responsible for the claimed injury.

# Weekly Law Resume

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

## Property Insurance - Stated Limit of Liability

*Agnes H. Everett v. State Farm General Insurance Company*, (April 29, 2008) Court of Appeal, Fourth District

When coverages are changed, an insurer must be careful to notify the insured of the effect of the changes. This case concerns the change of a policy from guarantee replacement cost to stated value. Agnes Everett purchased a home in 1991 for \$99,000. She also purchased a homeowners policy from State Farm, which included an endorsement for guaranteed replacement cost coverage. In 1997, State Farm eliminated the guaranteed replacement cost coverage and notified its insureds in writing that the policies were now being written with a stated policy limits. Everett did not deny receiving the notice. With each annual renewal, the homeowner was advised that it was their responsibility to insure their home for adequate coverage. State Farm also advised their insureds that the replacement cost estimate contained on the renewal certificate was an estimate and not a guarantee. Everett also

received the required disclosure explaining the terms of the coverage. Her home was destroyed on October 25, 2003 in a fire. Everett was paid the amount of her limit for dwelling coverage and for personal property. She initiated suit against State Farm and its agent for breach of contract, breach of the implied covenant of good faith and fair dealing and related causes of action. She asserted she was entitled to full payment to replace her property without regard to policy limits and that she did not have adequate notice of the changes made in her policy. State Farm filed a motion for summary judgment, which the trial court granted. Everett appealed. The Court of Appeal affirmed. First the Court interpreted the policy and found the language to be clear and unambiguous. The policy clearly stated it would pay up to the applicable limit of liability to repair or replace the dwelling with similar construction. There was no ambiguity. Everett further contended that State Farm breached the contract by not paying

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# Weekly Law Resume

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

Continued from page 4

to replace her home. The Court stated the policy language did not have any language guaranteeing replacement cost coverage. Everett contended the policy limits should have equaled replacement cost. The Court stated State Farm was not required to set policy limits equal to the cost of replacement. It was up to the insured to determine whether she had sufficient coverage. State Farm reminded Everett each year that the replacement cost figures provided were merely an estimate and that it was her responsibility to determine whether her property was adequately insured. Furthermore, there was no breach of the requirement to provide adequate notice of reduction in her coverage. She was provided with more than sufficient notice of the changes in her policy. The Court held that because there was no breach of contract, there was no breach of the implied covenant. The judgment was therefore affirmed and the matter remanded to the trial court.

## COMMENT

This opinion outlines the manner in which a carrier can change the coverages provided under a policy, even a reduction in coverage. State Farm met their burden in this case of showing that adequate notice was given to the insured of such changes.

## Government Liability - Intersection Near School Not A Dangerous Condition

*Cerna v. City of Oakland*, (March 7, 2008) Court of Appeal, First District

This case deals with the issues of whether an intersection near a school constituted a dangerous condition of public property, pursuant to California Government Code section 835, and whether a school district is responsible for the safety of students outside school premises.

Plaintiff Maribel Espinoza, her three children, and a niece and nephew attempted to cross the intersection of International Blvd. and 27th Avenue in Oakland during the morning of January 15, 2002. Ms. Espinoza was taking the children to the International Community School, which was a few blocks away. While there was a marked crosswalk at the intersection, there was no traffic light or crossing guard. As Ms. Espinoza and the children attempted to cross International Blvd., an unlicensed motorist failed to yield and struck the family. Ms. Espinoza's niece was killed and others were injured. The Espinoza family filed suit against the City of Oakland ("City") and the Oakland Unified School District ("Dis-

trict") alleging that the subject intersection constituted a dangerous condition, and that the District failed to assure safe school access.

The City and the District filed motions for summary judgment. The trial court granted the motions. Plaintiffs appealed. The First District Court of Appeal affirmed.

On appeal, the Espinoza family first argued that there existed a triable issue of fact as to the existence of a dangerous condition. Plaintiffs contended, through the declaration of a retained traffic engineer, that the intersection was dangerous because the cross-walk should have been painted yellow; there was no traffic signal; there were no crossing guards; and there was no sign painted in the roadway — indicating a school crossing. The Court of Appeal determined that the City had discretion to paint the crosswalk white; as opposed to yellow. Further, motorists have a duty to yield to pedestrians in any color cross-walk. Therefore, the court held that any risk to pedestrians created by the color of the crosswalk was trivial. The Court further held that the City had no duty to install traffic signals. Under Government code section 830.4, the lack of a traffic signal at an intersection does not constitute proof of a dangerous condition. The Court also held that the lack of crossing guards cannot be a basis for proving a dangerous condition. A lack of human supervision is not a deficiency in the physical characteristics of public property.

With regard to claims against the District, Plaintiffs contended that under Cal. Education Code 44808, the District failed to exercise reasonable care. Under section 44808, school districts are not legally responsible for accidents to students on their way to and from school. However, the Espinoza family focused on language in section 44808 that sets forth that a school district must use reasonable care under a given circumstance. The Espinoza family claimed that the District failed to do so. The Court of Appeal rejected this argument, holding that the District was immune unless the District undertook to supervise or transport the student off campus. Here, there was no evidence that the District undertook to do so. The summary judgment was therefore affirmed.

## COMMENT

This case highlights the difficulties a public entity faces when a Plaintiff retains an accident reconstructionist or traffic engineer to critique a roadway or intersection. Here, the Court of Appeal rejected the criticisms and ruled that Plaintiffs failed to establish the existence of a dangerous condition as a matter of law.

# Insurance Commissioner Poizner Announces the Arrest of Auto Insurance Fraud Suspect

SACRAMENTO Insurance Commissioner Steve Poizner today announced the arrest of a Desert Hot Springs resident for allegedly defrauding his insurance company of \$26,000. Robert Andrew Nelson, 44, was arrested in Cathedral City on April 28 on charges of filing a false police report and knowingly presenting a fraudulent insurance claim.

"Insurance fraud is a serious violation of the law," said Commissioner Poizner. "Fraud Division experts and law enforcement officers throughout the state are highly trained to detect this type of crime - and they will not let criminals get away with their schemes."

On October 28, 2007, Nelson reported that his 2005 Expedition was stolen from his driveway in the middle of the night, wrecked, and returned to his driveway. Nelson claimed that he hosted a gathering of about a dozen acquaintances at his home and went to bed at 8 pm on October 27, while his guests remained at his home. He claimed he did not hear his Expedition being driven back to his home on three wheels, but found the damaged vehicle when he awoke the next morning. Nelson filed a claim with his insurance company, which paid out \$26,000 in replacement costs for the vehicle.

The insurance company was subsequently contacted and informed that Nelson struck a vehicle in the early morning of October 28. A police report and an additional witness also named Nelson as the driver of his vehicle at the time of the collision.

California Department of Insurance investigators revealed that a witness heard Nelson's vehicle strike another car in the early morning of October 28. The witness followed the Expedition to Nelson's home. Another witness claimed to have watched Nelson walking near his vehicle and into his home following the crash. According to another witness, there were no additional cars present at Nelson's home on the night of October 27, when he claimed he hosted a get together.

If convicted, Nelson could face a two to five year prison sentence and fine of up to \$50,000.

## NEWS OF MEMBERS

*Welcome*

**Jeffrey Weiss**  
**Palm Springs Claims Service**

**The CAIIA is happy to welcome  
this newest member to our  
organization.**

## "Thanks for the Newsletter"

*The Status Report received the following email. It was directed to our current President Peter Schifrin. We thank Sharon for the kind words.*

Hello, Peter. Thank you for thinking of me when mailing your organization's newsletter. It certainly helps me keep informed of the claims climate in California.

Sharon Kreft  
Sr. Property Claims Examiner  
CMIC Property Claims

## CCNC

Again this year the CAIIA has a booth for the CCNC at the Hyatt Regency, Sacramento. We need volunteers to populate the booth during the conference. If you want to attend the conference and spend a couple of hours at the booth, please email Sterrett Harper at [harperclaims@hotmail.com](mailto:harperclaims@hotmail.com). As usual, he is coordinating the volunteers.

# CAIIA 2008 Educational Events

As an authorized California DOI education provider (CDI# 206389), 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 Schirfin  
 Schirfin, Gagnon & Dickey, Inc.  
 9255 Corbin Avenue  
 Suite 200  
 Northridge, CA 91324

Questions? Call Peter Schirfin @ (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, 4<sup>th</sup> 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](http://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.



## Poem for Insurance Girls

Last night as I lay sleeping  
I died or so it seemed,  
Then I went to heaven  
But only in my dream.  
Up there St. Peter met me,  
Standing at the Pearly Gates,  
He said "I must check your record,  
Please stand here and wait."  
He turned and said "Your record  
Is covered with terrible flaws,  
On Earth I see you rallied  
For every losing cause."  
I see that you drank alcohol,  
And smoked and partied too,  
Fact is, you've done everything  
A good person should never do.  
We can't have people like you up here,  
Your life was full of sin,  
Then he read the last of my record  
Took my had and said "Come in."  
He led me up to the big boss and said,  
"Take her in and treat her well.  
She used to work in Insurance,  
She's done her time in hell."