



Editor's Corner

Go Green!

We are launching a new section of the Status Report dedicated to brainstorming and suggestions on becoming more ecological. This idea was brought to us by Steve Einhaus, Einhaus Adjusting Services, San Rafael, CA. Look for his article on page 4 in this issue and we urge you to submit ideas that you have implemented in your workplace or home



Duration of Leak Controls Homeowners Coverage, Not Abruptness of Pipe Rupture

Credit to Haight, Brown & Bonesteel, Los Angeles, CA

In *Brown v. Mid-Century Insurance Company* (No. B238357, filed 4/2/13, ord. pub. 4/25/13), a California appeals court ruled that the length of time a pipe leaks determines coverage, rather than the circumstances of the pipe failure itself.

In *Brown*, Mid-Century insured a split-level home on a concrete slab. The insureds first noticed condensation on the inside of windows and surrounding drywall. They cleaned, but it returned within a day. In a week, they noticed mold forming around the windows. A few weeks later, a family member went in the crawlspace and observed damp soil. They hired a plumber, who diagnosed a leak in a hot water line under the slab. The plumber opened the slab, found the leak and made the repair.

The Mid-Century policy listed certain types of loss or damage that were not covered, "however caused," including "loss or damage consisting of, composed of or which is water damage." The policy included an "extension of coverage" that provided "limited" water damage coverage "for direct physical loss or damage to covered property from direct contact with water, but only if the water results from ... (4) a sudden and accidental discharge, eruption, overflow or release of water ... (i) from within any portion of: (a) a plumbing system." The policy described what was not included in the limited water damage coverage: "A sudden and accidental discharge, eruption, overflow or release of water does not include a constant or repeating gradual, intermittent or slow release of water, or the infiltration or presence of water over a period of time. We do not cover any water, or the presence of water, over a period of time from any constant or repeating gradual, intermittent or slow discharge, seepage, leakage, trickle, collecting infiltration, or overflow of water from any source ... whether known or unknown to any insured."

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President's Message

CAIIA

We just completed our Spring Meeting in Lake Tahoe. On the 26th we met at an Italian Restaurant in South Lake Tahoe for dinner, sharing a glass of wine and enjoying the company of friends and fellow members. The following morning we had our continuing education class in which Attorney Stephen H. Huchting of the Law Firm of Morris, Polich & Purdy, LLP presented a very informative lecture on Claims Handling and Fire Investigations Ethics. After the morning presentation, we had a light lunch and then continued with the Business Meeting. I had assistance from the audience and from a certain Board Member to make sure that I at least attempted to follow Roberts Rules of Order. In fact, one of our members was kind enough to e-mail me a website to obtain a copy of the Roberts Rules of Order so hopefully when the Fall Meeting is held, I would do much better. Anyway, I presume that was the hint!

I would be remiss in not thanking Paul Camacho from Mission Adjusters for all of the assistance he gave me in helping to secure a location for the meeting which was absolutely superb. He also had suggestions where to dine. The restaurant provided an excellent dinner on Thursday and an excellent lunch on Friday.

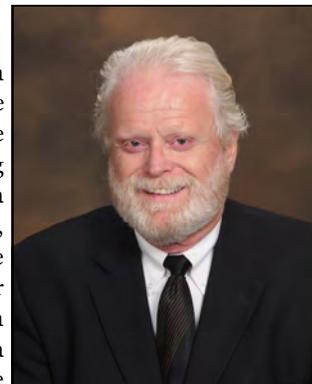
I cannot say enough about the effort that Tim Waters, our Education Committee Member, and his Committee did in putting together the presentation. Tim also confirmed that we are now a California Continuing Education Provider, certified for an additional 2 years. I want to thank him for the job he has done. He is mentoring Rick Kern of SGD to pass on the baton. The incoming President will have to work with that Committee to find qualified members to help Rick and the Board continue to make the CAIIA Continuing Education Program one of the best in the state.

This will be my last reminder, in the Status Report anyway, of the up-coming FCSPR, SIU and SEED Seminars that will be held in Pomona, Sacramento, Chatsworth, Emeryville, San Diego and Fresno. If you have not already made your reservations and sent in the Registration Form, you will find attached a Registration Form to this Status Report. I want to thank all of the participants who spend hours every year volunteering to put together this program, monitor the program and make the presentation. Again, that's what makes the Association what it is today.

Before the Spring Meeting, I had received an e-mail from one of our members, Steven Einhaus, who forwarded some information to me with a proposal to be considered for discussion at our meeting and future implementation about our concern for the environment. Your organization is already working on being "green" by not printing a Monthly Report anymore. This keeps thousands of pages from being printed every month. Additionally, this year we only printed a few hundred of the Directory, sending copies to each Board Member and the Sponsors, and e-mailing it out along with making it available on our website. Mr. Einhaus indicated that he would write an article to be published in the monthly newspaper, and we look forward to those articles.

We should be receiving information shortly concerning the Combined Claims Conference of Northern California. I understand it will be held in September on the 16th & 17th. I also understand this is their 20th Anniversary. Again, Mr. Harper will be asking for volunteers to staff the CAIIA Booth at this educational function. I also look forward to seeing old acquaintances and making new acquaintances.

(continued on page 3)



W.L. (BILL) McKenzie
CAIIA President

(continued from page 2)

As I finish writing this letter, I sometimes wonder why we as individuals continue to do the job that we do. At times we get absolutely no respect. Contrary to what we are painted as being selfish and only concerned with protecting the financial interest of the insurance companies, we are entrusted to serve both our clients and their insureds in a fair and equitable manner. I see us performing that task as professionals. We all read about the shortage of good adjusters and I sometimes wonder why a young college-educated person would want to begin a career in today's climate. However, when I look around at the people I represent, I don't see them as a corporation but as individuals who honestly believe that they owe a certain dollar amount on a claim and they strive to provide that service to their insureds through the use of professional independent insurance adjusters. I encourage all of us to mentor our replacements when given that opportunity.

W.L. (Bill) McKenzie

W.L. (BILL) MCKENZIE, RPA
President - CAIIA 2012-13



Notes and News from Members

Note from Eric Sieber:

Just read the newest publication, great job guys.

Bill, while I took a left turn from Law Enforcement to become an adjuster with Dad 38 long years ago, neither of my boys ever expressed any interest in working with me. When I once brought up the idea after the oldest was laid off from big Pharma about 4 years ago, it wasn't just "No", it was "Hell No!"

Pete, thanks for the Sircon.com link, I'll be even closer to Nevada once I am permanently ensconced in Lake Havasu, so will get that Nevada license soon.

Sterrett, ya always put together a nice read.

Kudo's all!

Best regards,
Eric Sieber CPCU, AIC, RPA
E. J. Sieber & Co. Claim Investigation
Alta Loma, CA 91701-8267

Response from Sterrett Harper:

Note from Pete Vaughan:

Based on the exercises in the book "What Color is My Parachute", I very consciously decided on a career as an adjuster. I found insurers that were interviewing, and conducted a campaign to become employed as an adjuster. This was not an accident. I believe that decision is one of the reasons that I accept the bad and the good of the business, and can remain enthusiastic.

Pete Vaughan
Vaughan & Associates
Benicia, CA 94510

The CAIIA, realizing protecting our environment and acting ethically are one and the same, is looking forward to addressing being conscious stewards of our environment. There are a myriad of ways, some known, countless unknown, that as a collective body we will be contemplating and addressing.

One small way we have gone green is by emailing our directory and thereby avoiding thousands of pages of print.



As we look ahead just 3 to 5 years we are aware that a more sustainable approach will result from the types of vehicles we drive. No doubt a number of members will be adapting to hybrid vehicles and considering electric vehicles for their business and/or personal use.

We intend to periodically provide our reflections in upcoming CAIIA newsletters to include advances within the industry and also what CAIIA members are thinking and implementing, both in business and personally, toward living more sustainably. If any member or reader has any ideas for this column or if any member has a desire to be on the “Go Green” committee, please contact steveeinhaus@gmail.com.

The earth is what we all have in common.

Wendell Berry

Steve Einhaus

The Other Shoe Drops – Corenbaum Answers Questions Raised by Howell

Credit to Low, Ball & Lynch, San Francisco, CA

In *Howell v Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541 the California Supreme Court decided that a plaintiff’s recovery for past medical expenses is limited to the amount paid for the medical expenses after any contracted-for discounts rather than the larger amount billed to the plaintiff prior to the application of those discounts. Unanswered by the Howell court were the following questions: (1) is evidence of the larger amount that was billed relevant to the reasonableness of the past medical services rendered; (2) is that evidence relevant to the determination of damages for future medical care; and (3) is that evidence relevant to the determination of the non-economic pain and suffering of the plaintiff. This case answers all three questions in the negative and, as a result, also precludes expert testimony about future medical expenses that is based on the billed amount of past medical expenses as well as arguments by plaintiff’s counsel on that basis.

John Corenbaum and Charles Carter were injured when a vehicle driven by Dwight Eric Lampkin collided with a taxicab in which they were passengers. Lampkin was convicted of fleeing the scene of an injury accident. Corenbaum, Carter and Daniella Carter then filed two civil actions against Lampkin, which were later consolidated. After a trial, the jury found that Corenbaum and Carter, respectively, suffered approximately \$1.8 million and \$1.4 million in compensatory damages, and that Daniella Carter suffered \$75,000 in damages for loss of consortium. The jury also awarded Corenbaum and Carter \$20,000 each in punitive damages. Lampkin appealed contending that the trial court erred by admitting evidence of the full amounts billed for plaintiffs’ medical care, rather than the amounts actually paid and accepted as full payment by plaintiffs’ medical providers.

For entire article, follow this link: <http://www.lowball.com/index.php/component/content/article/43-wp/1219-the-other-shoe-drops>

(continued from page 1)

Beside limiting coverage for water damage, the policy stated: "We do not insure loss or damage consisting of, composed of, or which is fungi. Further, we do not insure any remediation." The policy also contained the following exclusion: "We do not insure loss or damage directly or indirectly caused by, arising out of or resulting from fungi or the discharge, dispersal, migration, release or escape of any fungi. Further, we do not insure any remediation...." The policy defined fungi as "any part or form of fungus, fungi [or] mold...."

Mid-Century's adjuster took recorded statements in which the insureds admitted noticing the leak approximately one month before it was repaired and reported. The adjuster inspected the premises and the damaged pipe that had been removed by the plumber. Mid-Century also hired a leak detection company, which confirmed that there were no other leaks. Mid-Century then denied the claim on the basis of wear and tear, that led to a hole in the pipe through which water leaked for a period of time.

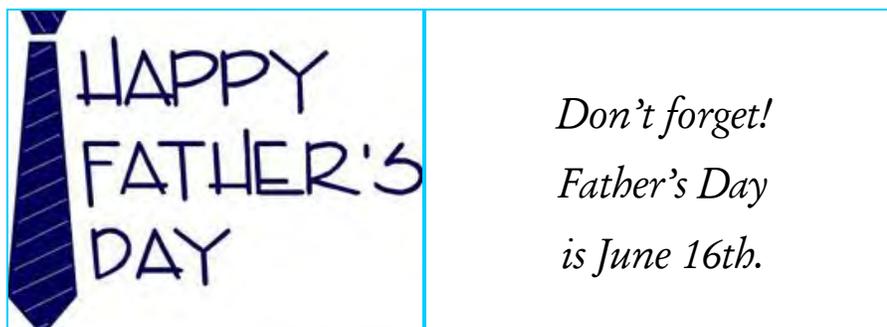
In the subsequent bad faith lawsuit, Mid-Century moved for summary judgment based on an expert's declaration of an opinion that gradual corrosion had damaged the pipe, which had been defectively embedded in the concrete slab without a plastic sleeve. The expert opined that the hole was the result of ordinary wear and tear, and would have developed as a dripping pinhole that gradually accelerated to a steady leak, with the water migrating to and pooling in the adjacent dirt floor of the crawlspace. Based on his examination of the pipe, photographs and water bills, the insurer's expert concluded that the pipe had been leaking for at least five months before it was repaired.

The insureds countered with their own expert, who gave his opinion that even if the corrosion to the pipe had been gradual wear and tear, there was a precise instant – a nanosecond – when it suffered a sudden breach, going from watertight to leaking in an instant. They argued that, at a minimum, this posed a triable issue of fact precluding summary judgment.

The *Brown* court disagreed, finding that there was no "sudden and accidental discharge, eruption, overflow or release of water." According to the court, even if the pipe transitioned from sound to unsound in an instant, that did "not change the fact that the release of water, even if it commenced with a nanosecond 'breach in the wall of the pipe' and resulted in a 'mist, stream and spray,' was constant or intermittent, and occurred over a period of 'a month or two' (according to the [insureds]) or five months (according to Mid-Century). Even if...the pipe 'failed suddenly,' the water damage...resulted from hot water 'continu[ing] to spray and stream (not drip) out the holes until the water line was shut off.'" Thus, "whether the water leaked or sprayed or streamed out of the hole(s) in the pipe, the water leaked, sprayed, or streamed out constantly and gradually over time. Such a water discharge does not qualify as 'sudden' under the plain meaning of the terms of the [] policy."

The *Brown* court also rejected an argument that the mold and fungi exclusion did not apply, on a claim that the efficient proximate cause of the damage was a covered risk. The court disagreed, saying that, even if the damage had been due to a sudden discharge of water, the mold was not a conceptually distinct risk or event. (Citing *Finn v. Continental Ins. Co.* (1990) 218 Cal.App.3d 69, 70-72.)

Finally, the *Brown* court rejected a claim that the limitation on water losses was not sufficiently conspicuous, plain or clear, merely because it was contained in an "extension of coverage" provision rather than the policy's exclusions. The court noted that the limitation was stated in understandable terms, in the vocabulary of the average layperson, and was not hidden in fine print.



***Torts – Public Entity – Qualified Immunity for Police Officers
A.D., et al. v. California Highway Patrol, et al.***

***United States Court of Appeals, Ninth Circuit
April 3, 2013***

Credit to Low, Ball & Lynch, San Francisco, CA

The concept of qualified immunity involves shielding a police officer from a lawsuit where the officer's actions do not violate clearly established federal rights. This case explores the scope of qualified immunity, post-verdict.

At around 2:00 a.m. on March 23, 2006, the California Highway Patrol ("CHP") engaged in a high-speed chase with Karen Elkund. The chase, which topped 100 miles per hour, began in the East Bay, crossed the Bay Bridge, and ended on a dead-end street in San Francisco. Upon reaching the dead-end, Ms. Elkund backed her vehicle into one of the CHP patrol cars. She then drove forward and stopped. CHP Officer Stephen Markgraf looked inside her vehicle and did not see any weapons. He then tried unsuccessfully to open a car door and break a window, yelling at Ms. Elkund that the chase was over, and to turn the car off. Ms. Elkund responded with an expletive before reversing her car again, and ramming the same patrol car two more times.

Approximately 10 seconds later, Officer Markgraf discharged his firearm at Ms. Elkund, utilizing 12 rounds. He continued firing, after his supervisor told him to stop. None of the other officers on-scene had fired their guns; and none were in the path of Ms. Elkund's vehicle. Ms. Elkund died.

Ms. Elkund's children filed a lawsuit, alleging various causes of action. They eventually abandoned all claims but one: due process under the Fourteenth Amendment. At trial, the jury found in favor of the plaintiffs. Before, during and after trial, Officer Markgraf filed various motions with the trial court, all asserting qualified immunity. Each of these motions (summary judgment, judgment as a matter of law, and renewed judgment as a matter of law) were denied. Officer Markgraf appealed these denials and other issues.

With respect to qualified immunity, the Ninth Circuit addressed two questions raised by the issue of qualified immunity: (1) was there a violation of a constitutional right; and (2) was the right clearly established at the time of the incident?

Before delving into these questions, the appellate panel reiterated that, in order for police conduct to violate due process, it must "shock the conscience." In other words, the officer's actions must involve (1) acts of deliberate indifference; or (2) acts intended to do harm, unrelated to any legitimate law enforcement objective. The appellate panel noted that only the second possibility (intent to harm unrelated to any legitimate law enforcement objective) was at-issue here. The court also specified that the "intent to harm" standard is a subjective standard of culpability.

Turning to whether there was a "clearly established" right at the time of the incident, the panel noted that as of the date of this shooting in 2006, the U.S. Supreme Court (in 1998) had ruled that an officer who acts with a "purpose to cause harm unrelated to the legitimate object of arrest" has violated due process under the Fourteenth Amendment. Following that decision, the Ninth Circuit (also in 1998) had ruled that legitimate objectives (such as self-protection or protection of the public), could justify law enforcement acting with intent to harm. Taken together, the appellate panel held that these decisions made it clear by 2006 that "no reasonable officer could fairly have believed that it was constitutional to shoot a civilian with the subjective purpose to harm unrelated to a legitimate objective."

In reaching this conclusion, the panel also felt bound by the jury's factual finding. Because the jury found that Officer Markgraf acted with intent to harm, without any legitimate law enforcement objective, the court felt compelled to find that any reasonable officer would have known that such conduct violated the due process clause. The panel also relied on the jury's factual finding that a violation of a constitutional right (the first question in the inquiry) had occurred.

The Ninth Circuit then went one step further, finding that even if Officer Markgraf had attacked the jury's verdict on insufficient evidence grounds, it would still uphold the verdict. The court found the evidence reasonably supported the inference that Officer Markgraf acted with intent to harm unrelated to any legitimate law enforcement objective.

COMMENT

Pursuant to *A.D. v. California Highway Patrol*, it will now be difficult, if not impossible, to obtain qualified immunity for "subjective intent" constitutional violations, where the jury has factually found such a violation. The court acknowledged this reality. The court did not foreclose the possibility of post-verdict qualified immunity for objective-standard cases.

CAIIA 2013 Educational Events

As an authorized California DOI education provider (CDI# 198351), the CAIIA will be presenting its annual education series including:

- 1) Certifications for the CA Fair Claim Settlement Practices (FCSPR) and Seminar on Special Investigation Unit Regulations (SIU) (CDI# 278573 for 2 CE hours). Recertification required every year.
- 2) Seminar for the Evaluation of Earthquake Damage (SEED). (CDI# 278570 for 8 CE hours). Recertification for EQ required every 3 years.
- a) Included in the SEED program is the training and certification required by CCR, Title 10, Chapter 5, Subchapter 7.5.1, Article 1, §2695.40 through 2695.45 and Insurance Code 10089.3. Those regulations set forth the requirements of Insurance Adjuster Training for Evaluating Earthquake Damage as required for all adjusters who evaluate earthquake claims.
- b) Includes the FCSPR and SIU certifications at the SEED locations.

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



ATTENDEE NAME

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 Address _____
 City _____ Zip _____
 Phone _____
 E-mail Address: _____

Fees (circle one): FCSPR/SIU SEED

CAIIA Member fee	\$40.00	\$100.00
Ins. Co. Employee fee	\$50.00	\$120.00
Non-Member I/A fee	\$60.00	\$190.00*

SEED course includes fee for FCSPR/SIU Reg 5)
 Amount Enclosed - \$ _____

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Tim P. Waters, CPCU, AIC
 CAIIA CE Provider Director
 c/o TPW Claims Services
 PO Box 5642
 Orange, CA 92863-5642

~Questions? Call Tim Waters @ 714-402-8756
 or via email at : tim@tpwclaims.com

Schedule for SEED locations:

Registration	7:30 a.m.	to	8:00 a.m.
FCSPR & SIU Seminar	8:00 a.m.	to	10:00 a.m.
SEED Seminar	10:00 a.m.	to	5:00 p.m.

Schedule for Red's Only locations:

Registration	9:30 a.m.	to	10:00 a.m.
FCSPR & SIU Seminar	10:00 a.m.	to	12:00 a.m.

(Anyone wishing to come to the SEED locations for only the Reg's recertification program should note the earlier start time)

FCSPR, SIU & SEED SEMINARS (check one)

June 6, 2013
Pomona: Shilo Inn
 3101 W Temple Ave [map link](#)
 Pomona, CA 91768

June 13, 2013
Sacramento: DoubleTree by Hilton
 2001 Point West Way [map link](#)
 Redwood Room Sacramento, CA 95815

FCSPR/SIU ONLY SEMINARS

June 6, 2013
Pomona: Shilo Inn
 3101 W Temple Ave [map link](#)
 Pomona, CA 91768

June 12, 2013
Chatsworth: SGD, Inc.
 9171 Gazette Ave. [map link](#)
 Chatsworth, CA 91311

June 13, 2013
Sacramento: DoubleTree by Hilton
 2001 Point West Way [map link](#)
 Sacramento, CA 95815

June 13, 2013
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 Emeryville, CA 94808
 Conference Room D-2nd Floor

June 18, 2013
San Diego: American Technologies
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 San Diego, CA 92126

June 21, 2013
Fresno: Ramada University Hotel
 324 E Shaw Ave [map link](#)
 Fresno, CA 93710-7680

Please visit www.caia.com for more information.

*CAIIA agrees 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 per firm.

On the Lighter Side...

As I hurtled through space, one thought kept crossing my mind - every part of this rocket was supplied by the lowest bidder.

- **John Glenn**

When the white missionaries came to Africa they had the Bible and we had the land. They said 'Let us pray.' We closed our eyes. When we opened them we had the Bible and they had the land.

- **Desmond Tutu**

America is the only country where a significant proportion of the population believes that professional wrestling is real but the moon landing was faked.

- **David Letterman**

I'm not a paranoid, deranged millionaire. God damn it, I'm a billionaire.

- **Howard Hughes**

After the game, the King and the Pawn go into the same box.

- **Italian proverb**

The only reason they say 'Women and children first' is to test the strength of the lifeboats.

- **Jean Kerr**

I've been married to a communist and a fascist, and neither would take out the garbage.

- **Zsa Zsa Gabor**

You know you're a redneck if your home has wheels and your car doesn't.

- **Jeff Foxworthy**

When a man opens a car door for his wife, it's either a new car or a new wife.

- **Prince Philip**

The best cure for sea sickness, is to sit under a tree.

- **Spike Milligan**

Lawyers believe a man is innocent until proven broke.

- **Robin Hall**

Kill one man and you're a murderer, kill a million and you're a conqueror.

- **Jean Rostand**

Having more money doesn't make you happier. I have 50 million dollars but I'm just as happy as when I had 48 million.

- **Arnold Schwarzenegger**

In hotel rooms I worry. I can't be the only guy who sits on the furniture naked.

- **Jonathan Katz**

If life were fair, Elvis would still be alive today and all the impersonators would be dead.

- **Johnny Carson**

I don't believe in astrology. I am a Sagittarius and we're very skeptical.

- **Arthur C Clarke**

Home cooking. Where many a man thinks his wife is.

- **Jimmy Durante**

The first piece of luggage on the carousel never belongs to anyone.

- **George Roberts**

If God had intended us to fly he would have made it easier to get to the airport

- **Jonathan Winters**

I have kleptomania, but when it gets bad, I take something for it.

- **Robert Benchley**

