CAIIA Status Report

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June 2017

Loss Could be Worth More than ACV
Credit to Haight, Brown & Bonesteel, Los Angeles, CA

In *California FAIR Plan Assn. v. Garnes* (No. A143190, filed 5/26/17), a California appeals court ruled that "total loss" under Insurance Code section 2051 refers to physical damage or loss, not the economic fact that the cost of repair exceeds the actual cash value of a home. Thus, where the home is not physically destroyed, the insured is entitled to the actual cost of repair, minus depreciation, even if that amount exceeds the fair market value of the home.

In *Garnes*, the insured had a fire policy issued by the California FAIR Plan with limits of $425,000. It was agreed that the assessed value of the insured home was only $75,000. The insured suffered a kitchen fire with estimated repair costs of $320,000. The FAIR Plan declared the home a total loss because the cost of repair exceeded the home's value, and offered to pay the actual cash value as provided by Insurance Code section 2051(b)(1).

Section 2051 of the Insurance Code provides that under an open fire insurance policy (where the ultimate value of the property is not agreed in advance but left "open") that pays "actual cash value," as did the FAIR Plan policy, the "measure of the actual cash value recovery . . . shall be determined" in one of two ways, depending on whether there has been a "total loss to the structure" or a "partial loss to the structure." In case of total loss to the structure, the amount payable is the "policy limit or the fair market value of the structure, whichever is less." For a "partial loss to the structure," the measure prescribed is "the amount it would cost the insured to repair, rebuild, or replace the thing lost or injured less a fair and reasonable deduction for physical depreciation" or "the policy limit, whichever is less." (Ins. Code, §§ 2051(b)(1); (b)(2).)

The *Garnes* policyholder argued that she had only suffered a partial loss and was therefore entitled under section 2051(b)(2) to the lesser of the policy limit, or the cost to repair or replace less depreciation. The appeals court agreed: "Construed in accord with its plain meaning, this provision, coupled with sections 2070 and 2071, sets a minimum standard of coverage that requires FAIR to indemnify Garnes for the actual cost of the repair to her home, minus depreciation, even if this amount exceeds the fair market value of her home."

The court said that the insurance statutes should be construed "to ascertain and effectuate legislative intent," looking first to the statutes' words. According to the court, section 2051 "plainly refers to physical, rather than economic loss." "Contrary to FAIR's policy definition, which defines 'total loss' and 'partial loss' by reference to economic considerations (whether the cost to repair exceeds the property's fair market value), section 2051 differentiates between the degree of loss 'to the structure,' and it prescribes two different measures of actual cash value depending on whether the loss to the structure is 'total' or 'partial.'"

The court pointed out that the FAIR policy actually (and impermissibly) provided for situations where the economic loss exceeded the actual cash value, when the Legislature had included no such language in the statute. The *Garnes* court rejected the FAIR Plan's reliance on Insurance Code section 2071 and *Jefferson Ins. Co. v. Superior Court* (1970) 3 Cal.3d 398, for the proposition that "if the cost to repair or replace the damaged property is more than its fair market value, then, according to the plain language of section 2071, there is no coverage for the repair or replacement cost to the extent it exceeds the actual cash value of the property."

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Inside this issue…..

CAIIA Newsletter
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California Association of Independent Insurance Adjusters, Inc.

President's Message

SANDWICHES

Sandwiches were named after John Montagu, the 4th Earl of Sandwich, an 18th century English aristocrat. In those days, you just needed to have a piece of bread or bread like substance to put a piece of meat into. And of course, to some degree, the quality and size of the meat was dependent on whether you were an Earl.

Steve Washington

CAIIA President

But I go astray, this writing is about the tastiest sandwiches; classics and not so classics. Some weird sandwiches and other interesting or not so interesting facts about sandwiches.

If we talk classics it's hard to beat a good rueben, pastrami or beef dip. I love the sauerkraut and Russian dressing on the rueben, great mustard on the pastrami and fantastic *au jus* with the dip. And, what's better than rye bread? Arguably however, the most classic of all, is PB & J on white. Preferably grape jelly and Wonder Bread. Finally, let's not forget, steak between two pieces of bread or an awesome cheeseburger.

A friend who spent some time at Camp Lajeune, North Carolina, swears by the fried tomato sandwiches with mayonnaise and sometimes cheese. One of our adjusters was telling me he preferred ice cream sandwiches…. he is very funny. Elvis's favorite was a peanut butter and banana sandwich. Ernest Hemmingway's favorite was with liverwurst, swiss cheese, bell peppers and mustard. And there is the Hulk Hoagie, the Bambino and many others named for celebrities.

Also, what about a hot dog. Is it a sandwich….or a taco? Hot dogs are fantastic with chili. And, it's hard to beat a good bratwurst. By the way, my understanding is all brats are sausages but not all sausages are brats. Also, speaking of hot dogs and as a side note, Babe Ruth, aka The Bambino, once ate 12 jumbo hot dogs with all the fixings and drank 8 bottles of soda between games in a double header.

Great sandwiches are often on French rolls or sourdough, with swiss cheese and thousand island dressing with a chip or maybe potato salad and a pickle, preferably dill. Jalapenos and onions (raw or grilled) are excellent additions to a sandwich and of course, so is bacon, but what isn't better with bacon?…. But try and get a great ham and American cheese sandwich these days or a grilled cheese. Everybody tries to be so foo-foo and dress it up and add a bunch of junk.

In my opinion there are some things that just should not go on sandwiches (like alfalfa sprouts, kale and cucumbers). Save those for your salad. Also, ketchup should really not go on a hot dog. Also, a lettuce wrap is not a sandwich. What about potato chips on/in a sandwich? I like it, but the best way is to jam a classic Lays in your mouth while chewing, with your mouth full of sandwich. More options that way.

I will leave you with a classic joke. A ham sandwich walks into a bar and asks the bartender for a drink. The bartender says "Sorry, we don't serve food here".

Steve Washington

CAIIA President 2016-2017

Washington & Finnagan, Inc.
Steve.washington@sbcglobal.net

NEWS FOR OUR MEMBERS

SAVE THE DATE

The CAIIA is proud to be exhibiting at or sponsoring the following upcoming events:

June 7, 2017	CAIIA Seminar for the Evaluation of Earthquake Damages and Fair Claims Settlement Practices Recertification, Brea, CA
June 21, 2017	CAIIA Fair Claims Settlement Practices Recertification, Chatsworth, CA
June 22, 2017	CAIIA Fair Claims Settlement Practices Recertification, Fresno, CA
June 23, 2017	CAIIA Fair Claims Settlement Practices Recertification, San Jose, CA
June 28, 2017	CAIIA Fair Claims Settlement Practices Recertification, La Mesa, CA
September 13-15, 2017	Claims Conference of Northern California, Sacramento, CA
September 28, 2017	CAIIA Annual Meeting, location TBD
October 17, 2017	CPCU Educational Event, Studio City, CA
March 6-7, 2018	Combined Claims Conference, Garden Grove, CA

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The *Garnes* court stated:

"FAIR's reliance on *Jefferson* overlooks one thing: the case involved a standard form policy that was part of an earlier statutory regime. In 2004, 34 years after *Jefferson* was decided, the Legislature adopted the current version of section 2051, which prescribes the method for determining (and therefore the meaning of) 'actual cash value' for purposes of determining the insurer's indemnity obligation under an open fire insurance policy. Thus, while in 1970, the *Jefferson* court interpreted 'actual cash value' as used in section 2071 to mean 'fair market value,' in 2004 the Legislature adopted a more specific and mandatory measure of 'actual cash value' in a closely related section of the Insurance Code, section 2051.... To continue to interpret the language 'actual cash value' in section 2071 to mean fair market value in the face of section 2051's specific definitions of that phrase would run contrary to the general presumption that a word or phrase used in a particular sense in one part of a statute is intended to have the same meaning if it appears in another part of the same statute."

The *Garnes* court then engaged in a detailed analysis to conclude that both the Legislative history and the Insurance Commissioner's own interpretations supported the policyholder's arguments.

The court also addressed the perceived conflict with Insurance Code section 2051.5, granting insurers authority to withhold a portion of replacement cost coverage until completion of repair. FAIR Plan argued that "Had Garnes purchased a replacement cost policy ... she would have been entitled to the amount needed to rebuild, repair or replace the damaged property *only* upon showing that she had made those repairs." But under Garnes' interpretation of the statute, "she would be entitled to replacement cost recovery without having to first repair the property or to otherwise comply with section 2051.5(a)."

The *Garnes* court saw no problem: "[U]nder a replacement policy that requires repair, rebuilding or replacement, the owner is entitled to actual cash value in the same amount as an ACV policyholder, at the outset, but in addition, is entitled to the difference between actual cash value and full indemnity (replacement costs without depreciation) at the conclusion of repair or rebuilding. There is no anomaly in this result."

The *Garnes* court then went on to conclude that to the extent the FAIR Plan policy could be interpreted as affording less coverage than provided by Insurance Code section 2051, it was unenforceable as a matter of public policy.

Friday, June 23rd

Recreational Use Immunity

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

The consideration exception to CA's recreational use immunity statute is contingent upon payment of consideration, not its receipt by the party seeking immunity.

Pacific Gas and Electric Company v. The Superior Court of San Mateo County (Rowe)

Court of Appeal, First Appellate District (April 5, 2017)

In Pacific Gas and Electric Company v. Superior Court (Rowe), the Court of Appeal was called upon to decide an issue of first impression concerning the "consideration exception" to California's recreational use immunity statute – specifically, whether the exception applied even if the Defendant seeking to claim immunity received no portion of the consideration paid.

California Civil Code § 846, the recreational use immunity statute, confers property owners with immunity from liability arising from the recreational use of their property. Specifically, in pertinent part, the statute provides: "An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on those premises to persons entering for a recreational purpose, except as provided in this section."

This statute, which was enacted to encourage property owners to allow the general public to engage in recreational activities free of charge on privately owned property, also includes three enumerated exceptions, pertaining to: (i) victims of willful or malicious conduct by the owner, (ii) persons who have paid consideration for permission to enter, and (iii) express invitees. In this opinion, the Court of Appeal determined that the second category, i.e., the consideration exception, is not exclusively applicable to the particular landowner who receives the consideration, but rather to all holders of an interest in the property, including a licensee of the property owner – here, PG&E.

This case arose out of an incident that occurred in the summer of 2012 when a twelve-year-old boy, Zachary Rowe, was on a camping trip with his family in San Mateo County Memorial Park and suffered catastrophic injuries when a 75-foot tree fell on his tent at 5:00 a.m. as he lay sleeping. Petitioner PG&E owns and maintains an electricity distribution line in the park that serviced a nearby restroom, and has a license permitting it to enter the park to inspect and maintain its equipment and the vegetation in the vicinity of its power lines, including near the campsite where Zachary was injured. Zachary's family paid an entrance fee to camp to the park's owner, the County of San Mateo, but paid nothing to PG&E.

Zachary, through his guardian ad litem, brought suit against PG&E, the County and others. He asserted a single cause of action against PG&E, essentially alleging that PG&E was negligent in its responsibility to inspect and maintain its electrical lines and adjacent areas in a safe condition. PG&E moved for summary judgment on the ground that it owed Zachary no duty of care as a matter of law pursuant to the recreational use immunity statute. The trial court denied the motion, but certified the question as appropriate for interlocutory review by the Court of Appeal.

Ultimately, the Court of Appeal affirmed the trial court's denial of PG&E's motion for summary judgment, concluding that the consideration exception to recreational use immunity applied to PG&E, even though Zachary's fee for recreational access to the campground was not paid to it.

In explaining this determination, the Court of Appeal extensively discussed the text of the statute as well as its purpose. Civil Code § 846 does not include language specifying that the consideration must be paid to the landowner invoking the immunity. The statute is intended to function as an inducement to encourage landowners to permit free recreational use of their property by removing a disincentive for doing so, i.e., potential tort liability. Thus, the immunity conferred by § 846 is a means to an end. Once permission to enter for a recreational purpose is conditioned upon the payment of a consideration, the property is no longer open to the public to recreate free of charge and the reason for the immunity evaporates.

The Court also analyzed the legislative history, public policy considerations and case law from other jurisdictions, finding that they all supported the same conclusion: "that the payment of consideration in exchange for permission to enter a premises for a recreational purpose abrogates the section 846 immunity of any nonpossessory interest holder who is potentially responsible for the plaintiff's injuries, including a licensee or easement holder who possesses only a limited right to enter and use a premises on specified terms but no right to control third-party access to the premises."

General Release

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

Editor's Note: Almost as a aside, the author mentions a pitfall of having a confidentially agreement in any Release. This confidentially agreement could come back to haunt the released parties.

Muhammad Iqbal v. Imran Ziadeh

COURT OF APPEAL, THIRD APPELLATE DISTRICT (March 24, 2017)

The issue in this case is whether plaintiff's release in a previous case immunized defendant Imran Ziadeh ("Ziadeh") against liability arising from the same accident because Ziadeh was an "affiliate" of Yosemite Auto Sales, Inc., its owners individually and doing business as Jimmy Tow ("Yosemite"), who was the defendant in the previous case. The Appellate Court concluded as a matter of law that Ziadeh was not an affiliate of Yosemite, and thus the release did not bar plaintiff from bringing a subsequent action against Ziadeh.

In the previous case, plaintiff Muhammad Iqbal sued Yosemite for personal injuries sustained while he was retained as a mechanic doing work at Yosemite. In the previous case, plaintiff reached a settlement and dismissed the action with prejudice as to Yosemite, its owners individually and doing business as Jimmy Tow. Specifically, the release also included within its scope that Yosemite's "affiliates" and "all other persons, firms, or corporations, with whom any of the former have been, are now or may hereafter be affiliated," will be released from liability as well.

After the dismissal of the first action, plaintiff brought this action against Ziadeh. At the time of the accident, Yosemite leased the land for their business from Ziadeh. Ziadeh had previously operated a used car dealership on the property. Upon leasing the property to Yosemite, Ziadeh entered into an agreement with Yosemite under which he left several vehicles from his used car dealership on the property on a consignment basis for them to sell. The vehicle that injured plaintiff was one of those vehicles. Plaintiff based this action on the same facts as his first action, and he sued Ziadeh for negligence and premises liability.

Ziadeh filed a motion for summary judgment. He claimed he was an "affiliate" of Yosemite and could not be held liable for any claims arising out of the accident because of the release in the first action. Plaintiff opposed the motion for summary judgment on the grounds that the release was ambiguous and there were disputed issues of material fact regarding the contracting parties' intent. The trial court granted Ziadeh's motion for summary judgment, concluding Ziadeh was an affiliate for purposes of the release as a matter of law.

Plaintiff appealed from the summary judgment entered against him. The Appellate Court concluded that Ziadeh was not an affiliate of Yosemite, as the term "affiliate" is commonly understood, and thus was not immunized from liability by the release of the first action. The Appellate Court did not agree with the trial court's interpretation of the term "affiliate."

The Appellate Court reasoned that the term "affiliate" is unambiguous and that the common meaning of an affiliate generally is one who is dependent upon, subordinate to, an agent of, or part of a larger or more established organization or group. The Appellate Court reasoned that this is a closer relationship than that of Ziadeh and Yosemite, because Ziadeh only had a contractual relationship with Yosemite.

The Appellate Court analyzed the language of the release and the interpretation of the term "affiliate" as plaintiff and Yosemite intended. The language of the release states in pertinent part:

"Plaintiff hereby completely releases and forever discharges the former defendant from any and all past, present or future claims… including without limitation, any and all known or unknown claims for bodily and personal injury…this release and discharge shall inure to the benefit of the former defendants' present and future officers, directors, stockholders, attorney's agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interests….with whom any of the former have been affiliated…."

The terms of the release state that the plaintiff and Yosemite intended the release to apply only to those who had some type of ownership, fiduciary, agency, or dependent relationship to Yosemite, and defendants had no such relationship. Thus, the Court stated that to interpret "affiliate" as meaning one who has only a contractual relationship with Yosemite was inconsistent with the intent demonstrated by the release.

The Appellate Court noted that in the previous case plaintiff and Yosemite agreed to keep the settlement terms confidential. The court reasoned that "the contractual parties could hardly expect that persons thus barred from knowledge of the agreement… would be able to take advantage of the release, or any other provision the agreement." Specifically, the Appellate Court stated that "one cannot enforce a contract of which one is ignorant, and if the contracting parties have deliberately undertaken to hold their agreement in confidence, thus cannot be supposed to have meant to confer enforcement powers on those thus deliberately kept in the dark."

The Appellate Court concluded as a matter of law, that Ziadeh was not an affiliate of Yosemite for purposes of the release agreement, and thus summary judgment should not have been granted.

Workers' Compensation Rescission

Credit to: Haight, Brown & Bonesteel, Los AngelesCA

In *Southern Ins. Co. v. WCAB* (No. B278412, filed 5/10/17), a California appeals court, reversing a workers' compensation arbitrator's decision, held that a workers' compensation policy can be rescinded for material misrepresentations in the application, even after a workers' compensation claim is brought.

Southern issued a workers' compensation insurance policy based on the express representation that the employer's employees did not travel out of state. After an employee was injured in another state, Southern notified the employer that it was rescinding the policy because of the misrepresentation, and returned the premium. The issue of insurance coverage went to mandatory arbitration wherein the arbitrator concluded that, as a matter of law, the insurer could not rescind the policy, and the Workers' Compensation Appeals Board (WCAB) affirmed the arbitrator's decision.

The arbitrator had cited three reasons for finding there could be no "retroactive rescission" of a workers' compensation policy. First, Insurance Code section 676.8 (governing cancellation of workers' compensation insurance) says nothing about rescission. Second, there was no authorization from a judge or the WCAB. Third, a claim was pending and the employee would be left without coverage.

The appeals court disagreed: "Contrary to the arbitrator's ruling, a workers' compensation insurance policy may be rescinded. (Ins. Code, § 650.) A rescission is enforced by a civil action for relief based on rescission (Civ. Code, § 1692) or by asserting rescission as a defense. (*Resure, Inc. v. Superior Court* (1996) 42 Cal.App.4th 156, 165-166 (*Resure*).) Because the arbitrator and the appeals board did not address and determine whether rescission was a meritorious defense to the employee's claim, we annul the appeals board's decision and remand the case with directions to hear and determine whether the insurer was entitled to rescind, and did rescind, the policy."

To get there, the appeals court first held that the WCAB has jurisdiction to decide rescission, because rescission is in effect a coverage question and the appeals board has specific statutory authorization to decide coverage disputes (Lab. Code, § 5275(a)(1)): "[I]f Southern disputes workers' compensation insurance coverage because it claims there is no contract, it must submit to the jurisdiction of the appeals board on the issue of coverage even if that entails a ruling on whether the insurance contract is (or was) in effect."

The appeals court went on to conclude that the Insurance Code's rescission sections apply to workers' compensation insurance, like any other insurance. The court pointed out that in contrast to the Insurance Code sections governing cancellation of policies (Ins. Code, § 676.8), the rescission sections are silent on workers' compensation (Ins. Code, §§ 650, 651). The court found no indication in any of the applicable statutes of an intent to limit the right to rescind workers' compensation insurance.

The appeals court then explained the Insurance Code's "somewhat peculiar" limitation of rescission to the period prior to the filing of an "action on the policy," saying: "[T]he former equitable suit for rescission, now abolished, could not be brought if there was an adequate remedy at law. The adequate remedy at law was an action on the insurance contract. That is, if the policy holder brought an action on the contract, the carrier could assert rescission as a defense in that action. [] Thus, section 650 is an echo of the past reality that an equitable suit for rescission could not be brought in the face of a pending action at law. . . . [S]ection 650 does not affect the current state of the law which is that rescission can always be asserted as a defense to the action on the contract."

In any case, the court said that a workers' compensation claim is not the functional equivalent of an "action on the policy" and thus does not preclude rescission despite the existence of a pending claim. The court also rejected the arbitrator's criticism of "unilateral" action by the insurer, saying "rescission is routinely a unilateral act."

The appeals court did send the insurer a warning that merely announcing a rescission and returning the premium did not, in and of itself, discharge the insurer's obligations, finding a distinction between "effecting" rescission and "enforcing" it. The court pointed out that under the general rescission of contracts sections of the Civil Code, a contracting party who rescinds is provided a variety of options for relief, such as an action for declaratory relief. (Civ. Code, § 1692.) Likewise, the insurer can raise rescission as a defense in the workers' compensation proceeding. But in any case, the insurer is not discharged until there is a ruling on the rescission.

Having concluded that rescission was available to the insurer, the appeals court found numerous fact questions and remanded the matter to the WCAB for a determination on the merits.

GC Indemnified Despite Negligence

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

Subcontractors can still owe indemnity to general contractors even when the general is found liable for active negligence or willful misconduct. Oltmans.

Oltmans Construction Co. v. Bayside Interiors, Inc.

Court of Appeal, First Appellate District, 10 Cal.App.5th 355 (March 30, 2017)

Civil Code § 2782.05 renders an indemnity provision in a contract void and unenforceable "to the extent the claims arise out of, pertain to, or relate to the active negligence or willful misconduct of" a general contractor. Does a finding of active negligence or willful misconduct against the general contractor preclude the general contractor from recovering any indemnity, or does Civil Code § 2782.05 limit recovery to the portion of liability attributable to the negligence of others? The Court held that a general contractor can still be indemnified for the portion of liability attributable to the fault of others even if the general contractor is found liable for active negligence or willful misconduct.

Plaintiff Gerardo Escobar was an employee of O'Donnell Plastering, Inc., which was a subcontractor of Bayside Interiors, Inc., which was a subcontractor of Oltmans Construction Co., the general contractor. Escobar fell through an unsecured opening on a roof and suffered injuries when installing scaffolding that O'Donnell had contracted with Bayside to erect. An Oltmans employee had cut the opening for the installation of a skylight. Escobar sued Oltmans, and Oltmans filed a cross-complaint against Bayside.

One of the causes of actions was for recovery of contractual indemnity based on the following provision in the contract between Bayside and Oltmans:

"[Bayside] shall, to the fullest extent permitted by law, indemnify, defend, protect and hold harmless [Oltmans] . . . from and against each and all of the following: [¶] (a) Any claims . . . arising out of (i) the scope of the work of [Bayside], or (ii) breach of the obligations of [Bayside] arising from the scope of work under this subcontract . . . , or (iv) any other act or omission arising out of the work of [Bayside or its] sub-subcontractors . . . resulting in or alleged to have resulted in . . . bodily injury . . . . The indemnification and defense required by this Paragraph 11(a) shall apply in all described matters herein except to the extent the claims arise out of, pertain to, or relate to the active negligence or willful misconduct of the contractor parties . . ., or to the extent such obligation is inconsistent with the provisions of California Civil Code 2782.05." (Italics added.)

Bayside moved for summary judgment on Oltmans' claim that it was entitled to receive express contractual indemnity through this indemnity provision. Bayside claimed that the undisputed facts established that Oltmans' employee was actively negligent, which precluded Oltmans from obtaining any defense or indemnity under the terms of this indemnity provision. Oltmans argued that there was a material disputed fact as to its alleged active negligence and that, even if actively negligent, Oltmans was entitled to be indemnified for the portion of any liability incurred as a result of the negligence of others. The trial court granted Bayside's motion for summary judgment, and Oltmans appealed.

After the parties had submitted all of their briefs to the Appellate Court, the parties advised the Court that they had reached a settlement and requested dismissal of the appeal. The Court agreed to dismiss the appeal pursuant to the stipulation of the parties, but it decided to issue this published decision anyway.

The Appellate Court held that the trial court had improperly granted the motion for summary judgment, finding that Bayside may not have established Oltmans' active negligence as a matter of law. While that finding alone may have been enough to reverse the trial court's decision, the Appellate Court found that the trial court's incorrect interpretation of the indemnity provision of the subcontract was "a more fundamental error in the premise on which summary judgment was granted."

The Appellate Court decided that the language in the indemnity provision stating that the provision "shall apply in all described matters herein except to the extent the claims arise out of, pertain to, or relate to the active negligence or willful misconduct of the contractor parties . . ., or to the extent such obligation is inconsistent with the provisions of California Civil Code 2782.05" should not be interpreted to preclude indemnity if Oltmans is found actively negligent or liable for intentional misconduct. Instead, the Court interpreted the language to mean that Oltmans was entitled to indemnification for a claim that arose out of its negligence that was not active negligence or its own willful misconduct. The Appellate Court found that the apparent intent of the indemnity provision was to apportion liability between Oltmans and Bayside based on the proportionate or comparative fault of the parties. Even if Oltmans' active negligence was one cause of Escobar's injury, Oltmans could still be entitled to indemnification from Bayside for the portion of any liability it incurs attributable to O'Donnell or others.

The Appellate Court found that Civil Code § 2782.05 should be interpreted similarly. Civil Code § 2782.05(a) applies to any construction contract provision in which a subcontractor agrees to insure or indemnify a general contractor against liability for claims of death or bodily injury. Civil Code § 2782.05 (a) states that these provisions are void and unenforceable to the extent the claims arise out of, pertain to, or relate to the active negligence or willful misconduct of that general contractor. The Court of Appeal analyzed the history of the bill to support its interpretation of the statute that the purpose of the new provision of Civil Code § 2782.05 was to apportion liability on an equitable basis in proportion to the fault of the various parties.

On the Lighter Side...

June 23 is Take Your Dog to Work Day

Dogs have been man's best friend far back into pre-history when they became domesticated by choosing to live and work alongside mankind. From the very beginning, they worked alongside us, hunting and tracking and even keeping us safe at night by growling and barking when danger reared its ugly head. In modern day, this relationship has been forgotten, and the poor pooch is now left to sit at home while we go about our daily business. Take Your Dog To Work Day is set to change this old policy back again, and bring the happy puppy back into our daily work lives.

History of Take Your Dog To Work Day

Pet Sitters international decided, in 1996, that there were far too many instances of people leaving their animals at home while they went about their workday. These amazing people are dedicated to saving animals from local shelters and humane shelters, and helping them find good homes with people who will love and respect them. As part of this, they developed Take Your Dog To Work Day as an attempt to help restore puppies to the workplace and help people understand the human-animal bond.
Pets.Com acquired Take Your Dog to Work Day for a while, but that was before it crashed and burned in the dot-com crash. While they were still standing up and promoting the day, it was promoted by their poster dog Ernie, and then followed him with Sandy. 5000 companies were participating in this event by the end of 2003, and it's just growing more with every single year.

So take the time on Take Your Dog To Work Day to bring your puppy to work and help educate others on the importance of saving these amazing critters from a rescue shelter and the streets.

How to Celebrate Take Your Dog To Work Day

Well, that leaves us with a bit of a no-brainer now doesn't it? Take your dog to work with you! This doesn't mean you leave them in the car to cook in the midmorning sun, the puppy should spend the whole day with you by your side. If your work doesn't have a Take Your Dog To Work Day organized, you can be the one to spearhead this idea and help bring some doggie goodness to your office. Who knows, you may find some more dog fans in your co-workers, and maybe every day will become Take Your Dog To Work Day!

Credit to daysoftheyear.com

CAIIA 2017 Educational Event

Evaluation of Earthquake Damage (SEED)
&
CA Fair Claim Settlement Practices w/SIU (FCSPR)

Date: June 7, 2017

Location: Embassy Suites Brea *map link*
900 E. Birch Street
Brea, CA 92821

SEED Seminar (incl FCSPR & SIU) (8 hrs CA CE)

Time:	Registration	7:30- 8:00 AM	
	SEED Training	8:00- 5:00 PM	
			✓
Cost:	CAIIA Member	$ 100.00	☐
	Ins Co Employee	$ 120.00	☐
	Non-Member I/A	$ 199.00	☐

FCSPR & SIU Seminar Only (2 hrs CA CE)

Time:	Registration	7:30- 8:00 AM	
	FCSPR & SIU	8:00- 10:00 AM	
			✓
Cost:	CAIIA Member	$ 40.00	☐
	Ins Co Employee	$ 50.00	☐
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3550 Camino Del Rio North, Ste 212
San Diego, CA 92108-1739

**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.*

Lunch provided with SEED Class

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. Recertification required every three years. (CDI#279570 for 8 CE hours) Includes the **FCSPR** and **SIU** certifications.

Questions: Call Richard Kern at (619) 280-7702 or via email at rkern@sgdinc.com

CAIIA CONTINUING EDUCATION REGISTRATION FORM

FAIR CLAIM SETTLEMENT PRACTICES including SIU (FCSPR)

2 HOURS CALIFORNIA CE CREDITS FOR ADJUSTERS

Attendee Name

Company

Email Phone

LOCATIONS:

☐ June 21, 2017 9:00- 11:00 AM*
SGD, Inc
9171 Gazette Avenue
Chatsworth, CA 91311-5918

☐ June 22, 2017 9:00- 11:00 AM*
McCormick Barstow, LLP
7647 North Fresno Street
Fresno, CA 93729-8912

☐ June 23, 2017 9:00- 11:00 AM*
Anderson Group Int'l
2285 Paragon Drive
San Jose, CA 95131

☐ June 28, 2017 9:00- 11:00 AM*
Walsh Adjusting Company
7839 University Avenue, Ste 106
La Mesa, CA 91942-4078

*Registration begins at 8:30 AM

WAYS TO REGISTER:

EMAIL:
rkern@sgdinc.com

FAX:
(619) 546-8723

MAIL:
CAIIA Education Provider
Richard Kern
c/o SGD, Inc.
3550 Camino Del Rio North
Suite 212
San Diego, CA 92108

COST:

☐ CAIIA MEMBER $40 ☐ INSURANCE CO EMPLOYEE $50 ☐ NON-MEMBER I/A $60

PAYMENT OPTIONS:

☐ **Check (Payable to CAIIA)** ☐ **Visa** ☐ **MasterCard** ☐ **Discover** ☐ **AmEx** ☐ PAY with PayPal

Account No **Expiration Date**

Amount **Card Verification Code**

Name as it appears on card

Signature

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