CAIIA Status Report

JULY 2006

Insurance Law Update

Submitted by Sedgwick, Detert, Moran & Arnold, LLP

Insurer Not Required to Notify Additional Named Insured When Lender Cancels Policy After First-Named Insured Defaults on Policy Financing

By Laura Goodman, Sedgwick San Francisco

The California Court of Appeal for the Second Appellate District issued an opinion yesterday holding that an additional insured had no coverage for damage occurring after effective cancellation of an insurance policy by the insured's premium finance lender, even though the "additional named insured" had no notice of the cancellation. In *The Gorham Company, Inc. v. First Financial Insurance Company*, Cal.App.4th, 06 C.D.O.S. 4559 (May 31, 2006), the first named insured, PDC, financed the purchase of its insurance policy through a premium financing agreement pursuant to which PDC assigned its right to cancel the policy to its lender. Upon PDC's failure to make a required installment payment, the lender sent a notice of cancellation to the insurer advising that the lender was canceling the policy for nonpayment of premium. The insurer cancelled the coverage as requested.

The additional named insured – The Gorham Company – contended that it was entitled to a defense and indemnity in underlying construction litigation under PDC's policy and that, because it received no notice of the cancellation, the cancellation was ineffective as to Gorham. The court disagreed, relying on California Insurance Code Section 673, which provides that a lender's cancellation of a financed insurance policy because of an insured's default must be in accordance with that section. Section 673(d) – the section pertaining to cancellation by an industrial loan company – requires three steps for cancellation; none of them require that either the lender or the insurer give notice of cancellation to additional insureds. The court noted that under section 673(I), an insurer is expressly relieved of complying with any other duty or form of cancellation required by the Insurance Code when an insurer relies upon a lender's written exercise of the insured's right to cancel a policy. The court rejected Gorham's arguments that Gorham was a "third-party" to whom notice must be given under section 673(f) and that notice was required to be given by Insurance code section 677.2 (cancellation by insurer).

Finally, relying on *Baroco West, Inc. v. Scottsdale Ins. Co.*, 110 Cal.App.4th 96 (2003), the court analyzed whether the underlying complaint raised a potential for coverage (of Gorham) under the property damage provisions of the policy. After setting forth the general definition of "property damage", the court found that two exclusions applied to preclude coverage and that the damage caused by Gorham's alleged conduct occurred *after* the lender had already cancelled the policy. The court discussed the exclusions (1) for damage caused by PDC's ongoing construction operations during the policy period, and (2) for "restoration, repair, or replacement" caused by PDC's "incorrectly performed work" and found that they applied. The court further found that the "exclusion to the exclusion" for "products-completed operations hazard" did not apply because PDC's work was not completed at the time of the "occurrence".

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An Employer Organization of Independent Insurance Adjusters

Inside This Issue

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■ PRESIDENT'S MESSAGE

A few months ago, my wife found a hubcap and we wound up building a car.

She wanted to remodel by adding a sky light in the kitchen. Of course, our roof was about twenty years old and so it was decided that a new roof should be put on the house.

Then our enterprising 23-year old son decided to do his senior project as an IT major at California State University Fresno, by rewiring the house with DSL cabling, cable TV, telephone, and whatever else he could dream up. Of course, this meant that we needed at least five days of clear weather.

In that we were going to this much trouble, it was decided to change out some of the windows to dual pane, add insulation, and, as it turned out, replace all the ductwork.

While this project started in October, we could not get five days of clear weather until April. Of course, when the roof was torn off, two days later a major storm came through. Fortunately, by this time we had invested $250.00 in plastic to cover the entire roof.

Needless to say, throughout the winter months every time it rained we were looking for leaks.

Through this experience, I was caused to rethink some of the claims that we received starting with the first major storm in January. Insureds were contacted and requested to give me a call if there was any displacement of plastic on their roof. Contractors were busy and there were delays in the repairs. Of course, the roofers who called during the summer time when business was slow were not calling during the rainy season when they are extremely busy. This can cause frustration on the part of the insured and it is understandable. Having gone through the same frustration, I had more empathy for their problems. It made me a better adjuster.

Finally, as a note of interest, the Board of Directors of CAIIA is in the process of implementing a procedure for possible recertification under the California Fair Claims Practice Regulations that my come into effect within the next few weeks. A notice will be in the next Status Report.

Have fun doing your job!

STEVE WAKEFIELD
President - CAIIA 2005-2006

Insurance Commissioner John Garamendi Announces Arrest of Three Riverside County Individuals Allegedly Involved in Staged Auto Theft Conspiracy

Norco resident allegedly staged theft of his own truck as it was stored in friend's backyard – if convicted, could face up to five years in prison with a $150,000 fine

RIVERSIDE – Insurance Commissioner John Garamendi announced today the arrest of Cameron Harris, 44, at his residence in Norco, and the arrests of Michael Weaver, 45, and Kelly Weaver, 43, at their residence in Corona.

Harris was arrested on May 17, and the Weavers were arrested the following day by investigators from the California Department of Insurance's Fraud Division. All three suspects were booked into the Riverside County Jail with a total bail of $25,000.

"These arrests send a loud and clear message to insurance scam artists," said Insurance Commissioner John Garamendi. "Scams like those alleged in this case and fleecing of consumers will not be tolerated by this department or by other law enforcement agencies – if you commit these crimes you will be caught and prosecuted."

Harris was charged by the Riverside County District Attorney's office with two felony counts of insurance fraud and one count of concealing a crime. Michael Weaver was charged with three felony counts of insurance fraud, and Kelly Weaver was charged with one count of felony insurance fraud. If convicted, each individual could face up to five years in prison with a $150,000 fine.

Investigators say that on October 14, 2004, Michael Weaver allegedly conspired with Harris to have him pick up Weaver's truck from a restaurant in Corona and then store it in the back yard of Harris' home in Norco. Weaver then reported his truck stolen to the Corona Police Department and a vehicle theft claim was filed with Progressive Insurance Company (Progressive).

On the theft claim, Kelly Weaver reported no collision damage although she allegedly knew the car had front end collision damage from a previous accident Michael was involved in. Investigators said she did this so as not to diminish the amount of money Progressive would pay on the claim.

During the time the truck was allegedly hidden in Harris' backyard, Harris and Michael Weaver removed and sold the engine and transmission. On February 2, 2006, the truck was recovered by a Riverside County Deputy Sheriff. By this time, Progressive had paid over $7,000 to the Weavers.

Assistance on this case was provided by the Special Investigative Unit of Progressive Insurance Company. The Riverside County Sheriff's Department and the Riverside Auto Theft Interdiction Detail (RAID) also assisted in the investigation.

Insurance Law Update

Submitted by Sedgwick, Detert, Moran & Arnold, LLP

U.S. Supreme Court Finds Fiduciary May Seek Reimbursement as "Equitable Relief" Under ERISA

June 2006

Sereboff et ux. v. Mid Atlantic Medical Services, Inc., U.S. Supreme Court

In *Sereboff et ux. v. Mid Atlantic Medical Services, Inc.*, 126 S.Ct. 1869, ---U.S.---, ---L.Ed.--- (May 15, 2006) the U.S. Supreme Court held that a plan administrator has the right to seek reimbursement of medical expenses as "equitable relief" under section 502(a)(3) of the Employment Retirement Income Security Act (ERISA), 29 U.S.C. §1001 et seq.

After suffering injuries in an automobile accident, Mr. and Mrs. Sereboff filed a lawsuit in California state court against third parties for compensatory damages. Mrs. Sereboff's employer sponsored a health insurance plan administered by Mid Atlantic Medical Services, Inc. (the "Administrator") which paid for the Sereboffs' treatment after the accident.

The Administrator retained counsel who asserted a lien on the anticipated proceeds from the third-party action for the medical expenses paid by the Administrator. The Sereboffs eventually settled their tort suit for $750,000, but did not send any payment to the Administrator in satisfaction of its lien.

The Administrator asked the federal district court for the District of Maryland to issue a temporary restraining order and preliminary injunction requiring the Sereboffs to retain and set aside part of the settlement to satisfy the lien. The district court entered summary judgment in favor or the Administrator and awarded the Administrator its attorneys' fees. After the Fourth Circuit affirmed in part, vacated in part, and remanded, certiorari was granted.

The Supreme Court held that the Administrator's claim was one for equitable relief under §502(a)(3). Since the Administrator was a fiduciary seeking to enforce the "Acts of Third Parties" provision of the Plan, the only issue was whether the recovery sought was "equitable" under §502(a)(3), rather than "legal." The Court found the claim to be equitable because the Administrator sought identifiable funds in the control and possession of the Sereboffs, which was indistinguishable from an action to enforce an equitable lien established by agreement.

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Damages- Application of Proposition 51 to Intentional Torts

Thomas v. Duggins Construction Co., Court of Appeal, Fourth District - May 25, 2006

In 1986, the voters of the State of California approved Proposition 51 (codified under Cal. Civil Code sections 1431 to 1431.5). The purpose of the measure was to balance the interests of injured parties who sustained serious damages caused by several tortfeasors, one or more of which could be insolvent, against the interests of minimally culpable, "deep pocket" defendants being held liable for the entirety of plaintiff's damages.

Under Prop. 51, in any action for personal injury, property damage or wrongful death, the liability for non-economic damages shall be several only, and not joint. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant's percentage of fault. The issue presented in this case is whether an intentional tortfeasor is entitled to an apportionment of non-economic damages under Prop. 51.

Plaintiffs Thomas and Taylor were employees of an electrical contractor, Bentley. Bentley purchased a used scissor lift from Defendant Duggins. Duggins employees Roben, Dhalliwal and Calhoun were involved in the sale of the scissor lift. Two days after purchase, Plaintiffs were seriously injured when the platform of the lift failed, causing the lift to tip over.

Plaintiffs filed suit against Duggins for products liability and negligence. Thereafter, Plaintiffs amended the complaint to name Roben, Dhalliwal and Calhoun as Defendants and to add causes of action for fraud, deceit, and willful misconduct. At trial, a jury returned a special verdict in favor of Plaintiffs. The jury specifically found that the lift was defective; that Roben and Dhalliwal were acting in the course and scope of their duties for Duggins when the sold the lift to Bentley; and that Dhalliwal intentionally made false representations or failed to disclose important facts about the lift to Bentley.

The jury allocated fault for Plaintiffs' injuries as follows: 40 percent each to Duggins and Bentley and 10 percent each to Roben and Dhalliwal. Post-trial, the court ruled that Prop. 51 was inapplicable to the Plaintiffs' fraud cause of action. After the court entered judgment, Duggins moved unsuccessfully for a new trial. Duggins then appealed. The Fourth District Court of Appeal affirmed.

Prior to adoption of Prop. 51, California law was well established that a tortfeasor who intentionally injured another was not entitled to contribution from any other tortfeasors. The question for the Court of Appeal was whether the passage of Prop 51 changed the existing law regarding an intentional tortfeasor's potential liability for the entirety of plaintiff's damages. The Court held that the same policy considerations apply today. An intentional actor should not be able to rely on someone else's negligence to shift responsibility for his or her own conduct.

In this case, the jury found that Duggins' employee Dhalliwal committed an intentional tort. Because Dhalliwal was acting in the course and scope of his duties for Duggins, Duggins was vicariously liable for the intentional misconduct. As such, Duggins vicarious liability was not subject to reduction under Prop. 51. Thus, Duggins was potentially responsible for the entirety of Plaintiffs' non-economic damages. The judgment was therefore affirmed.

COMMENT

This case holds that Proposition 51 does not apply in favor of an intentional tortfeasor. Therefore, an intentional tortfeasor may be held entirely responsible for a plaintiff's non-economic damages.

Duty of Care - Assumption of Risk

Susan Ford v. Polaris Industries, Inc., Court of Appeal, First District - May 18, 2006

The doctrine of primary assumption of the risk has become an important defensive tool in personal injury litigation. This case examines whether it may be used in a strict product liability action.

Steve and Laura Nakamura purchased a two-seater Polaris personal watercraft. On September 9, 2001, Laura Nakamura was giving Susan Ford a ride on the watercraft when Susan fell off and was severely injured by the high-pressure stream from the water jet. Ms. Ford sued Laura Nakamura and Polaris for her injuries. At trial, an expert testified that the positioning of the exhaust nozzle on the watercraft created a danger that a passenger who fell off the watercraft would be severely injured by the rearward ejection of water from the craft. There was also

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CAIIA Calendar

- **Claims Conference of Northern California**
  September 21-22, 2006
  Contact F. Michael Sowerwine at
  (510) 740-0377

- **CAIIA Annual Convention**
  October 11-13, 2006
  Sheraton Grand Hotel, Sacramento
  Contact Sharon Glenn at 925-277-9320

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testimony regarding the lack of an adequate design for a passenger to hold on to the craft. Polaris had issued warnings admonishing patrons to wear protective clothing. There were decals on the watercraft containing these warnings. The Nakamuras did not have any discussions with Ms. Ford prior to the ride.

The trial court granted summary judgment for Laura Nakamura on the basis of the primary assumption of the risk doctrine. The doctrine holds there is no duty of care owed to those who are injured while participating in risky activities, if they are injured by an activity inherent in it. Polaris opposed the motion. The trial court denied Polaris' motion for summary judgment on the same theory. The matter went to trial, and judgment was entered against Polaris in a sum in excess of $3,000,000. Polaris appealed.

The Court of Appeal affirmed. It concluded that the trial court did not err in refusing to apply the primary assumption of the risk doctrine to Ford's strict product liability claim. The Court held that a manufacturer's duty to produce defect-free products is not excused by primary assumption of the risk, absent extraordinary circumstances. The Court further stated that, in recreational equipment defect cases, the issue is whether the manufacturer has attempted to eliminate or provide protection against an inherent risk in a sport. This helps define the scope of duty of the manufacturer..

In this case, the risk of falling off the watercraft and coming in contact with water from a jet ski was inherent in use of the craft. However, injuries from the rearward ejection of high speed water was not part of the fundamental risk. Thus the primary assumption of the risk doctrine did not apply. The Court stated that, in a design case, in order to find a risk is inherent in the design of the product, it must be found that its absence would substantially change the sport or deter participation. In this case, the Court noted that alternative designs existed to reduce the injury sustained in this case. The manufacturer's duty under these circumstances was to minimize the risks without altering the nature of the sport..

In this case, the plaintiffs did not assert that the design defect affected the inherent risk of the sport. Rather, they asserted there were means that could have been taken to prevent injury once one fell off of the watercraft. It was then up to the jury to decide if the benefits of the design outweighed the dangers inherent in that design.

The trial court also did not err in refusing to allow Polaris to argue fault of Laura Nakamura. The contention was made that Ms. Nakamura should have passed on the manufacturers' warnings. The Court held that she had no such duty. The Court held that the manufacturer could not transfer responsibility to give warnings to the owner of the craft. The Court held that the operator had no duty to pass on the manufacturer's warnings. The judgment was therefore affirmed..

COMMENT

This case gives a very detailed analysis of the primary assumption of risk doctrine and how it should be applied in products liability cases. It is a very complicated opinion that is worthy of review for those involved in these types of cases.

Duty to Defend - D&O Policy

Oak Park Calabasas Condominium Assn. v. State Farm Fire and Casualty Co., Court of Appeal, Second District - February 21, 2006

The duty to defend requires a potentiality for coverage under the policy in question. This case points out the importance of examining the underlying claim when analyzing coverage and the duty to defend in the context of a condominium association's refusal to pay a construction contractor.

The Oak Park Calabasas Condominium structures suffered damage in the 1994 Northridge earthquake. Oak Park contracted with a construction company by the name of ECC to repair the structures. A dispute arose during construction, and Oak Park refused to pay the remaining amounts due under the contract. ECC recorded a mechanic's lien and filed an action against Oak Park and the owners of the condominiums. In this action, cross-complaints were filed by several of the condominium owners against the Association Board, claiming the Board had been negligent in the handling of the construction claims and that it had breached duties to the owners.

Oak Park tendered defense of the complaint to State Farm. State Farm denied a defense to Oak Park and its owners for the claims made by the contractor. However, it did accept the defense of Oak Park and the Board of Directors on the cross-complaints.The claims against the individual condominium owners were resolved by summary judgment, and the cross-complaints were dismissed. Trial of the main action against Oak Park resulted in an award for the contractor on the breach of contract claim, and also for fraud, punitive damages, attorneys' fees and costs.

Oak Park sued State Farm for its refusal to defend the complaint. The trial court severed the coverage claim, and after trial, ruled that there was no potential coverage for the action. Judgment was entered for State Farm. Oak Park appealed.

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When You Need to Know What Really Happened

Submitted by Garrett Engineers, Inc. - Forensic Division

Identity Theft Of Cars:

We recently attended a presentation put on by a member of the National Insurance Crime Bureau (NICB). The topic was vehicle cloning.

Each year there are about 1.2 million cars stolen in the US. This number has been fairly stable for the past 10-15 years. About 65% are recovered. Annual cost estimates range from eight to twelve billion dollars per year. When cars are stolen for resale by professional thieves, the typical transaction nets $30,000. So how do they sell a stolen car without getting caught? There are several methods.

Using the first method, they visit the parking lot of an upscale mall and pick out a nice looking new car. Let's say a green Durango. The vehicle identification number (VIN) is displayed on a plastic strip under the front windshield so they write it down along with the license and the make and model of the car. It is also helpful if the car is unlocked so they get the owner's name and address from the registration.

Next, they steal a similar make and model car from another location. Let's say a red Durango. A flatbed tow truck is sufficient equipment for a quick removal. They take it to their shop, remove the front window glass, and change the locks.

For transponder equipped vehicles, they can exchange the locks and security system with replacement parts bought at a junk yard from a similar totaled vehicle. They then scan both the door sticker plaque and the dashboard VIN plate. Using computer software, they change the VIN number of the red car to the VIN number of the green car. They then print the altered scanned images on a color laser printer. Next, they glue them back onto the red car and overlay with clear plastic to make them look identical to the originals. Lastly, they replace the front window glass. They have now cloned the green VIN onto the red car.

The next step is research. They look up the owner of the green car to get the owner's name and address (Mr. Green). They may enlist the aid of a DMV employee who is looking to supplement his income. Then they write a letter to the DMV and ask for a change of address to their P.O. box in a different state. They may also report the plates as stolen and ask for new ones after the change of address. There are no agreements between states to trade information about what VIN numbers are registered in a given state. Now "Mr. Green" sells the red car to an accomplice. They apply for new title. They now have a clean title for the stolen vehicle. They then sell the red vehicle to an innocent party (IP). The IP registers his new red car and lives happily ever after. Well, almost, for there are a few stray details that someone else has to clean up.

What happens to Mr. Green? Hopefully, he doesn't get stopped by the police for a traffic infraction. If he does, the police query of the DMV data bank shows the green Durango is owned by someone else, and has different license plates. It is kind of hard to explain, especially if Mr. Green has already been caught breaking a traffic law. Assuming he doesn't get stopped, what happens? If he wants to sell his car, the DMV will give the new purchaser a rude reception when they try to register it. If Mr. Green stays clear of the police and doesn't try to sell his car what then? After a while he will notice that he is driving on expired tags. Was the renewal notice lost in the mail? A trip to the counter of the DMV confirms he is the victim of vehicle identity theft.

What other variations exist? First, instead of cloning an existing VIN number, the thieves can also create a number that was never issued. VIN formula descriptions and meanings are readily available over the Internet. The thieves scan a good title from one state, alter the scanned image to accommodate the new information and print out the title on a high quality paper (bought, stolen or furnished by a bribed DMV employee). They then go to a different state, pose as a new resident and apply for a new clean title. After they have the new title and plates they sell the car to an IP. The same fictitious VIN can be used several times in different states in this manner.

Another variation is used for insurance fraud. The doctored car with new plates is sold to an outsider, who agrees to participate in the fraud. According to his tax return, he makes $30k a year. Since he is such an exemplary saver, he can afford to buy a year old Escalade for $50k cash, (according to the title transfer application). He calls his insurance agent and buys full coverage for his new ride. He drives it for two months, making sure to let his neighbors see it, and even volunteering to drive the neighborhood kids to football practice a couple times. Then, much to his surprise, his new car is stolen! He reports it to the police and to the insurance company. The police close the case because there is no evidence. The insurance adjuster (who smells a rat) interviews the neighbors. "Sure we saw the car," they say. The insurance company then issues a check to the former owner to replace his stolen vehicle per

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When You Need to Know What Really Happened

Submitted by Garrett Engineers, Inc. - Forensic Division

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the terms of the policy. He cashes the check, deducts his pre-agreed small handing fee and forwards the remaining proceeds to the ring operator. The car is loaned out again to a different straw buyer (after the VIN is updated) for a repeat performance. After several transactions the car may be finally sold to another IP-usually at a substantial discount at the corner of "Walk" and "Don't Walk". The trail ends.

In addition to the insurance companies, the vehicle manufacturers also share in these losses, because the IPs bring their cars in for warrantee work. The original buyer may not have bought an extended warrantee, but you can bet that the new VIN shows an extended warrantee was purchased. The dealers and ultimately the manufacturers are thereby defrauded.

But wait, you say, I thought that the VIN was printed/engraved/stamped on each car in several places, some hidden. This is true, but those that are readily accessible are also changed (die grinder, bondo, paint, new stamp). The hidden VIN numbers constitute a continuing cat and mouse game. The crooks get caught, they tell their friends how, and that hidden location now becomes public information via the Internet.

So how should you, as an average consumer, protect yourself? First, cover your VIN so it is not available for easy duplication. Secondly, know when your registration is due - if the renewal doesn't show up on time call the DMV to verify that they still have your correct name and address for the vehicle. Thirdly, before buying a car, use one of the national databases, such as Carfax, to check the background of the car you want to buy. The national private databases combine information from all states. A few warning signs will quickly jump out at you. First, if it is only a year or so old, is there a lien from a bank or did someone pay $50k cash for the car? Secondly if it is a couple years old, is there a history of registrations and a service history? Or did the car suddenly spring into existence as a three year old? Most obviously, does that same VIN exist in several states?

Lastly, if the deal seems too good to be true…

…it probably is.

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

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The Court of Appeal affirmed. The State Farm policy issued to the Condominium provided coverage for Business Liability, which covered claims for bodily injury, property damage, and personal injury or advertising injury. In addition, the policy provided Directors and Officers Liability Coverage for "wrongful acts." Coverage was provided for negligent acts, errors, omissions, or breach of duty related to management of the Association. The Court quickly disposed of the Business Liability coverage claims as there were no claims for bodily injury or property damage. It focused in on whether there was coverage under the Directors and Officers Liability Coverage.

Wrongful acts coverage in a Directors and Officers Liability Policy typically covers negligent breaches of fiduciary duty or violations of Securities law. Interpreting the coverage provided, the Court concluded that it provided coverage for negligent acts, negligent errors, or negligent omissions. Oak Park argued the policy covered any error or omission of the Association. The Court noted that, if Oak Park's construction of the policy were correct, a condominium association could enter into a contract with a construction contractor and then decide not to pay the bill, shifting the obligation to an insurer. The Court stated that no rational insurer would undertake such an obligation.

Furthermore, it would destroy the concept of fortuity, which is the basis of insurance. The contract that Oak Park entered was voluntary. Oak Park's decision not to pay the bill was voluntary. If Oak Park had coverage for this type of claim, Oak Park could receive the benefit of the construction contract and not pay for its cost, thus shifting the burden to its insurer. Oak Park had received substantial insurance monies from State Farm to pay for the earthquake loss. Oak Park, in essence, was seeking to enrich itself by forcing State Farm to pay twice for the same property loss. The Court refused to allow such a result by affirming the judgment of the trial court.

COMMENT

This is an interesting case because it is one of the few cases in California to analyze D&O coverage and the extent of such coverage. Furthermore, it shows the importance of analyzing the underlying claim to determine if there is coverage.

Insurance Commissioner John Garamendi Announces the Arrest of California Department of Corrections and Rehabilitation Correctional Sergeant for Workers' Comp Insurance Fraud

Sacramento correctional sergeant collects $115,000 in workers' comp benefits while earning $130,000 working as a real estate agent.

SACRAMENTO – Insurance Commissioner John Garamendi announced today the arrest of Sacramento resident and California Department of Corrections and Rehabilitation Correctional Sergeant Steven Michael Shadden, 32, on April 4, 2006, on workers' compensation insurance fraud charges.

Shadden was booked into the Sacramento County Jail with $115,000 bail. He was charged with one felony count of knowingly preparing or making a false written or oral statement in support of an insurance claim; one felony count of knowingly concealing an event that would affect a person's right to an insurance benefit; and one felony count of knowingly making or representing a false or fraudulent statement or representation for the purpose of obtaining insurance compensation.

On March 28, 2003, Shadden, a correctional sergeant at San Quentin State Prison, filed a workers' compensation injury claim for his left ankle. Upon receiving the claim, the workers' compensation carrier, State Compensation Insurance Fund (SCIF), hired a private investigator to track Shadden's activities for a two-day period from August 26, 2003 to August 28, 2003. During this time, the private investigator discovered that Shadden was working as a real estate agent. Furthermore, he was videotaped performing activities inconsistent with his work restrictions advised by his doctors.

On March 2, 2004, Shadden submitted a Disability Retirement Election Application to CalPERS which stated he was not working. The California Department of Corrections and Rehabilitation's Office of Internal Affairs Unit subsequently received information from the CalPERS Investigation Unit which verified Shadden was in fact working for Century 21 Real Estate in Elk Grove. Shadden earned approximately $130,000 selling real estate and continued to write loans while collecting benefits from SCIF – all the while still claiming he was unable to work as a correctional sergeant at San Quentin. Shadden mailed his report of income earnings to SCIF, documenting $100,000 less than what he really earned while working as a real estate agent.

From the time Shadden filed his workers' compensation claim in March 2003 through December 2005, SCIF paid approximately $115,000 in benefits for his injury. Approximately $97,000 was paid directly to Shadden for temporary and industrial disability leave, while another $18,000 was paid for medical bills.

The continuing investigation is being conducted by the California Department of Insurance's Fraud Division, the California Department of Corrections and Rehabilitation's Office of Internal Affairs, CalPERS' Investigations Unit and SCIF's Special Investigative Unit. The Sacramento County District Attorney's Office is prosecuting the case.