CAIIA Status Report

July 2014

DEFENDANT MAY BE LIABLE TO THIRD PARTY FOR INJURY FROM ASBESTOS EXPOSURE WHERE THE EXPOSURE TO THE THIRD PARTY WAS REASONABLYFORESEEABLE

Credit to: Willis DePasquale, Orange, CA

Kesner v. Superior Court,California Court of Appeal, First District, No. A136378, May 15, 2014.

From 1973 to 2007 Johnny Kesner, Jr.'s uncle was an employee of Pneumo Abex, LLC. When he was young, Kesner would visit his uncle's home often, sometimes spending the night. In 2011, Kesner was diagnosed with Mesothelioma. Kesner filed a lawsuit against the uncle's employer claiming that his uncle had been exposed to asbestos during the course of his employment with Pneumo Abex and that Kesner had also been exposed while visiting his uncle's home. The Court of Appeals reversed the nonsuit in Pneumo Abex's favor. The court held that the general rule in California is that everyone is responsible for injury occasioned to another by his/her lack of ordinary care or skill in the management of his/her property. Whether a duty is owed to a third person depends on multiple considerations, including the foreseeability of harm to the plaintiff among other factors. The Court of Appeal held that an employer could be responsible for injuries to nonemployees due to the exposure of an employee to a toxin such as asbestos because the harm to a third party was foreseeable, and it was reasonably certain that plaintiff's mesothelioma was linked to some form of asbestos exposure.

POINTS TO CONSIDER:
Regarding the issue of duty, foreseeability is an important factor that may allow for the imposition of a duty as to a third party.

Hello to all CAIIA members and friends,

Share with us your newsworthy events and we will share with our growing list of subscribers to the Status Report

Thank you and have a safe and happy 4th of July.

Your Editor...

Published Monthly by
California Association of
Independent Insurance Adjusters

An Employer Organization of Independent Insurance Adjusters

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President's Message

Tanya Gonder

CAIIA President

Summer is here! School is out. Vacations are underway. It's the time of year for transition. Although school is in the distant past for most of us, summer brings back memories of long fun-filled days. That was a time when work didn't seem like work and happy hour got the night started.

Now back to the present! The CAIIA's education series is underway. Check our website, CAIIA.com for this summer's schedule.

Our Education Committee does a magnificent job of developing, organizing and scheduling the courses. The classes are taught by members and other insurance/legal professionals who volunteer their time. A heartfelt thanks to those of you who make our educational series a success.

I want to hear from you! This column is reserved for the president's message but I welcome your input. Send your article to president@caiia.com. If you want anonymity, just let me know.

Have a safe and fun-filled summer!

Tanya Gonder

2013/2014 CAIIA President

Social Host Immunity: Parents not Liable for Leaving Liquor Cabinet Open

Credit to Tyson and Mendes, La Jolla, CA

As parents with teenagers know, leaving your children unsupervised at the house with an open liquor cabinet can be a dangerous proposition. This inattention becomes even more problematic when the underage child invites friends over and provides alcohol to them. Should the parents be held liable for any injuries or death sustained by a minor who was furnished alcohol by the child in the parents' house? In the case of *Allen v. Liberman*, decided June 18, 2014 in the Third Appellate District of the State of California, the court found the parents had no liability under the social host immunity statute.

In *Allen*, a 17-year old girl, Shelby Allen, went for a sleepover at the home of her 16-year old friend, Kayli Liberman. After Kayli's parents went to bed, Shelby obtained vodka from the Libermans' bar and drank 15 shots. She started vomiting and passed out. Kayli propped Shelby's head against the toilet, took Shelby's cell phone, closed the bathroom door, and went to bed.

The next morning, Kayli informed her father they had been drinking and Shelby got sick. Mr. Liberman went to work without checking on Shelby because his daughter had told him Shelby was "okay" and he did not want to "invade the space of a teenage female behind a closed bathroom door."

Later that morning, another friend checked on Shelby and found Shelby unresponsive. 911 was called, but it was too late. Shelby was pronounced dead with a blood alcohol content of .339.
Shelby's parents sued Kayli Liberman and her parents for wrongful death. The trial court granted the defendants' motion for summary judgment barring the lawsuit based on the social host immunity statute.

In California, a social host who provides alcoholic beverages to a person of legal drinking age enjoys express statutory immunity from civil liability for any injury caused by the alcoholic consumer.

Civil Code §1714(b), (c).
The same protection does not apply for an adult social host who provides alcoholic beverages at the adult's residence to a person
whom the adult knows or should know is under the age of 21. This exception to the social host immunity law renders the adult social host liable to the underage drinker or someone harmed by the underage drinker due to his or her intoxication. Civil Code §1714(d).

On appeal, the Allens creatively attempted to bypass the social host immunity statute by arguing: (1) the Libermans' conduct fell outside the parameters of the social host immunity statute; and (2) the social host immunity statute does not provide blanket immunity to the Libermans because they owed Shelby an independent duty of care.

In addressing the first argument, the court found it illogical to interpret the social host immunity statute in a manner that gives protection to a person for directly handing a drink to a minor, but not to a person who fails to lock up the liquor cabinet to prevent a minor from partaking in alcohol. Thus, the court found the social host immunity statute applied to the Libermans even if they did not directly provide the alcohol to the minor, but simply failed to prevent the minor from drinking alcohol contained in their home.

As to the second argument that the Libermans owed an independent duty of care as adults to supervise a minor invitee in their home, the court reiterated the general rule that a person has no duty to come to the aid of another unless there is some special relationship between them which gives rise to a duty to act.

An exception to this rule is the "Good Samaritan" rule, where a person who elects to come to someone's aid has a duty to exercise due care and will be held liable if his or her failure to exercise such care increases the risk of harm or the harm is suffered because of the other's reliance upon the undertaking.

The court found no evidence Mr. and Mrs. Liberman acted as "Good Samaritans" at any point before Shelby stopped breathing. Although a special relationship existed between the Libermans and Shelby as she was a minor invited into their home, that relationship, by itself, did not negate the statutory social host immunity.

Incorporation of Defective Work Does Not Result in Covered Property Damage in California Construction Claims

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

In Regional Steel Corp. v. Liberty Surplus Ins. (No. B245961, filed 5/16/14, ord. pub. 6/13/14), a California appeals court held that the insured's use of the wrong steel seismic reinforcement hooks in construction of a mixed-use building was not an occurrence, and did not result in covered property damage.

Regional Steel was the structural steel subcontractor on a 14-story mixed-use project in North Hollywood, California. Regional supplied plans which were approved by the developer and its structural engineers for installation of steel reinforcements, including seismic reinforcement hooks, to be encased in concrete. During construction, City inspectors determined that the plans called for the wrong hooks, necessitating repairs to finished portions of the work and delays in further construction. This ultimately resulted in a lawsuit between the developer, Regional Steel, the concrete subcontractor, the structural engineer and a quality assurance inspector.

The project was insured under a wrap policy issued to the developer, with Regional named as an additional insured. The court rejected an argument that the wrap endorsement fundamentally changed the insurance, and the issue boiled down to whether incorporation of the wrong hooks, the damage caused by tearing out concrete to replace the hooks, or the resulting loss of use, triggered coverage. Liberty asserted that no damage to property was alleged and the purely economic losses caused by the need to reopen the poured concrete to correct the tie hook problem did not constitute "property damage" within the meaning of the policy. Liberty further posited that the tie hook problem did not constitute an “occurrence” within the meaning of the policy because the alleged damage was not caused by an accident.

The Regional Steel court noted a conflict in the law on whether construction defects that are incorporated into a whole property constitute property damage for purposes of a CGL policy. The court said that one line of cases "states the basic rule" of denying coverage for the cost of removing and replacing defective work or material, because such costs are considered economic loss and not physical injury to the property. (Citing F&H Construction v. ITT Hartford Ins. Co. (2004) 118 Cal.App.4th 364.) The other line of cases suggests that incorporation of a defective part constitutes property damage within the meaning of a CGL policy. (Citing Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc. (2000) 78 Cal.App.4th 847.)

The Regional Steel court distinguished the cases holding that incorporation of defective parts results in covered property damage as only involving hazardous materials, such as asbestos incorporated into a building or wood shavings adulterating food products. The court found those cases inapposite because they involved contamination by hazardous materials, and did not involve the incorporation of defective workmanship into a construction project. The court said that California cases consistently hold that with regard to construction claims, coverage does not exist where the only "property damage" is the defective construction, and damage to other property has not occurred.

The Regional Steel court also held that the "Impaired Property" exclusion barred the possibility of coverage, saying that: "Under that exclusion, there is no coverage for property damage to 'property that has not been physically injured' arising out of the [sic] Regional’s negligent failure to perform its contractual obligations based on installation of defective tie hooks. JSM’s action alleged that Regional negligently installed improper tie hooks and thus the underlying suit arose from deficiencies in Regional’s performance of its work or from Regional’s failure to perform a contract in accordance with its terms, or both."

California Expands Howell and Limits Damages Again

Credit to Tyson & Mendes, La Jolla, CA

Children's Hospital Central California v. Blue Cross of California

2014 WL 2590823 (June 10, 2014)

FACTUAL BACKGROUND

A California Appeals Court has just ordered a re-trial on damages, including additional discovery, based on the trial court's erroneous and prejudicial rulings regarding reasonable value of medical services rendered. At trial, Children's Hospital Central California ("Children's Hospital") and Blue Cross of California Partnership Plan, Inc. ("Blue Cross") disputed the reasonable value of medical services provided by Children's Hospital to Medi-Cal patients enrolled in Blue Cross's Medi-Cal plan. At the time Children's Hospital rendered these services, the hospital and Blue Cross did not have a written contract covering these patients. Accordingly, California law provides Children's Hospital was entitled to reimbursement for the "reasonable value" of its services rendered to the Medi-Cal patients.

Children's Hospital demanded payment of $10.8 million, the full amount the hospital billed for these services. Prior to trial, Blue Cross paid about $4.2 million as "reasonable value" of Children's' services based on the government's Medi-Cal reimbursement rates. However, the trial court restricted discovery and only allowed the parties to present the jury with full billed amounts for the services. Accordingly, the jury found Children's Hospital was entitled to the full billed amount and awarded Children's Hospital the difference of $6.6 million.

REASONING

The Appellate Court held the trial court erred in its discovery and evidentiary rulings based on a strict interpretation of California law governing reimbursement of these claims, Code of Regulations, title 28, section 1300.71, subdivision (a)(3)(b). As applicable in this case, subdivision (a)(3)(b) provides "Reimbursement of a Claim" is "the reasonable and customary value for the health care services rendered." (2014 WL 2590823 at *1, emphasis added.)

At trial, Children's Hospital bore the burden of proof regarding the reasonable care of specific services it provided. The Appellate Court cited *Howell v. Hamilton Meats & Provisions, Inc.* and explained a "medical care provider's billed price for particular services is not necessarily representative of either the cost of providing those services or their market value." (2014 WL 2590823 at *8.) Instead, "[r]easonable value is market value" – what Children's Hospital receives in payment for its services. (2014 WL 2590823 at *10.) "All rates that are the result of contract or negotiation, including rates paid by government payors, are relevant to the determination of reasonable value." (*Ibid.*)

HOLDING

The Appellate Court found the trial court erred by only permitting the jury to consider Children's Hospital's full billed charges. "The jury should have been permitted to hear and consider evidence on the full range of fees that [Children's] Hospital charges and accepts as payment for similar services in determining the reasonable value[.]" (2014 WL 2590823 at *11.) The Court further found the jury would likely have rendered a more favorable verdict for Blue Cross had it been educated on the true reasonable value of the services at issue, i.e. what Children's Hospital accepts as payment in full for the services it provides. Hence, Blue Cross is entitled to a new trial on damages, including additional discovery.

SIGNIFICANCE OF HOLDING

This case further supports the holding in *Howell* that payment amounts providers accept in full satisfaction of medical bills represents the reasonable value of medical services rendered. *Howell* and its progeny, including *Children's Hospital*, continue to support the position that plaintiffs may only recover the reasonable value of all alleged medical damages, past and future.

For example, if plaintiff forgoes available medical benefits such as private health insurance or available government benefits and instead chooses to receive past medical treatment on an inflated lien basis, this holding continues to support the argument plaintiff is entitled to recover only the reasonable value of past medical treatment and not the inflated lien amount. Additionally, if plaintiff claims alleged future medical treatment based on full billed amounts, this holding supports the argument that plaintiff should be limited to recovering the reasonable value of alleged future medical care. "Reasonable value is market value," and "[a]ll rates that are the result of contract or negotiation, including rates paid by government payors, are relevant to the determination of reasonable value." (2014 WL 2590823 at *10.)

As courts continue to delineate the applicability and scope of *Howell*, the *Howell* case remains the medical damages measure in California.

CCNC

Monday Afternoon Session
opens three-game series

August 18-20, 2014

Hyatt Regency
Downtown Sacramento

Hitting A Home Run
covering all the bases!

Claims Conference Northern California, Inc.

Register Now for the 21st Annual
Claims Conference of Northern California
www.ClaimsConference.org

Keynote Address from former major-leaguer

Adam Greenberg

One Last At Bat

We don't always get a second chance to do what we love in life.

In the long-standing tradition of the CCNC, the 21st annual event will focus on continuing education for P&C Insurance Claims Professionals.

A new agreement with the Hyatt Regency Downtown Sacramento keeps CCNC at its home playing field, bringing smiles to many fans.

A twilight opener Monday afternoon, August 18th, from 4-6pm, will precede the main event. Day games will be held Tuesday, August 19th and Wednesday August 20th, including CE classes raising players to Allstar status.

An evening double-header features a fine dinner banquet, and new wrinkle on evening fun, to be announced very soon.

With Exhibit booths now all but sold out for the season, vendor focus has turned to securing the best sponsorship opportunities at this time.

Attendee Registration is now open, with special preferred seating for carrier claims professionals and indepedent adjusters.

PLAY BALL!!!

On the Lighter Side…

THESE ARE ACTUAL COMPLAINTS RECEIVED BY
"THOMAS COOK VACATIONS" FROM DISSATISFIED CUSTOMERS :

1. "I think it should be explained in the brochure that the local convenience store does not sell proper biscuits like custard creams or ginger nuts."

2. "It's lazy of the local shopkeepers in Puerto Vallarta to close in the afternoons. I often needed to buy things during 'siesta' time -- this should be banned."

3. "On my holiday to Goa in India , I was disgusted to find that almost every restaurant served curry. I don't like spicy food."

4. "We booked an excursion to a water park but no-one told us we had to bring our own swimsuits and towels. We assumed it would be included in the price"

5. "The beach was too sandy. We had to clean everything when we returned to our room."

6. "We found the sand was not like the sand in the brochure. Your brochure shows the sand as white but it was more yellow."

7. "They should not allow topless sunbathing on the beach. It was very distracting for my husband who just wanted to relax."

8. "No-one told us there would be fish in the water. The children were scared."

9. "Although the brochure said that there was a fully equipped kitchen, there was no egg-slicer in the drawers."

10. "We went on holiday to Spain and had a problem with the taxi drivers as they were all Spanish."

11. "The roads were uneven and bumpy, so we could not read the local guide book during the bus ride to the resort. Because of this, we were unaware of many things that would have made our holiday more fun."

12. "It took us nine hours to fly home from Jamaica to England . It took the Americans only three hours to get home. This seems unfair."

13. "I compared the size of our one-bedroom suite to our friends' three-bedroom and ours was significantly smaller."

14. "The brochure stated: 'No hairdressers at the resort'. We're trainee hairdressers and we think they knew and made us wait longer for service."

15. "When we were in Spain there were too many Spanish people there. The receptionist spoke Spanish, the food was Spanish. No one told us that there would be so many foreigners."

16. "We had to line up outside to catch the boat and there was no air-conditioning."

17. "It is your duty as a tour operator to advise us of noisy or unruly guests before we travel."

18. "I was bitten by a mosquito. The brochure did not mention mosquitoes."

19. "My fiancé and I requested twin-beds when we booked, but instead we were placed in a room with a king bed. We now hold you responsible and want to be re-reimbursed for the fact that I became pregnant. This would not have happened if you had put us in the room that we booked."

CAIIA 2014 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# 279573 for 2 CE hours). Recertification required every year.

2) Seminar for the Evaluation of Earthquake Damage (**SEED**). (CDI# 279570 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

Name_____

Co._____

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	$199.00*

(SEED course includes fee for FCSPR/SIU Reg's)

Amount Enclosed - $ _____

Credit Card Payment:

Amex___Visa___ M/C___ Ex. Date: _____

Cardholder:_____

Card No:_____

Card Verification Code:_____

Billing Address:_____

_____

Signature:_____

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

Richard Kern
CAIIA Education Provider Director
c/o SGD
3530 Camino Del Rio North, Suite 204
San Diego, CA 92108

~Questions? Call Richard Kern @ (619) 280-7702
or via email at : rkern@sgdinc.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 Reg's Only locations:

Registration	8:30 a.m.	to	9:00 a.m.
FCSPR & **SIU** Seminar	9:00 a.m.	to	11:00 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)

☐ **July 10, 2014**
Brea: Embassy Suites
900 E. Birch St.
Brea, CA 92821 *map link*

FCSPR/SIU ONLY SEMINARS:

☐ **July 10, 2014**
Brea: Embassy Suites
900 E. Birch St.
Brea, CA 92821 *map link*

☐ **June 12, 2014** Closed
Chatsworth: *(Los Angeles)* SGD, Inc.
9171 Gazette Ave.
Chatsworth, CA 91311 *map link*

☐ **June 12, 2014** Closed
Emeryville: Everyville Conference Center
2200 Powell Street *map link*
Emeryville, CA 94608
Conference Room D-2nd Floor

☐ **June 04, 2014** Closed
San Diego: American Technologies
8444 Miralani Dr. map link
San Diego, CA 92126

☐ **June 13, 2014** Closed
Fresno: Law Offices of McCormick Barstow
7647 N. Fresno Street map link
Fresno, CA 93720

Please visit **www.caiia.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.*

Featured speakers scheduled for the Seminar for the Evaluation of Earthquake Damage (SEED)* to include:

Morgan Griffith, PE.
Exponent Failure Analysis Associates

Exponent®
Engineering and Scientific Consulting

Kevin Hansen, Esq.
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP

McCORMICK BARSTOW
ATTORNEYS AT LAW

Mr. Dan Dyce, CPCU, RPA
CEA Earthquake Response Manager
California Earthquake Authority (CEA)

CEA CALIFORNIA EARTHQUAKE AUTHORITY

Douglas Jackson, RPA
CAIIA Past President
SGD, Inc.

SGD
Insurance Adjusters • Investigators • Administrators

Peter Schifrin RPA
CAIIA Past President
SGD, Inc.

Mr. Jeff Caulkins, AIC, AMIM, RPA
John S. Rickerby Company
CAIIA Past-President

Fair Claims Regulations Presenters:
Sterrett Harper, Harper Claims Service, Inc.
Richard Kern, SGD, Inc.
Pete Vaughan, Vaughan & Associates
William Mackenzie, Walsh Adjusters

(* As of Press Time)

California Association of Independent Insurance Adjusters
CAIIA Office, P.O. Box 168, Burbank, CA 91503-0168
Address Correction Requested

THE CALIFORNIA ASSOCIATION OF INDEPENDENT INSURANCE ADJUSTERS

CALIFORNIA ASSOCIATION OF INDEPENDENT INSURANCE ADJUSTERS
CALIFORNIA
THERE IS NO SUBSTITUTE FOR EXPERIENCE

PROUDLY PRESENTS
CAIIA's SEED Program

Seminar for the Evaluation of Earthquake Damage

and

Seminar on CA Fair Claims Settlement Practices Regulations plus Seminar on Special Investigation Unit Regulations

2014 SEASON
*Planting the **SEED** of Knowledge*