

Brandt Fees Increase Allowable Punitive Damages Credit to: *Haight, Brown and Bonesteel, Los Angeles, CA*

In *Nickerson v. Stonebridge Life Ins. Co.* (No. S213873, filed 6/9/16), the California Supreme Court ruled that in an insurance bad faith case an award of attorney's fees under *Brandt v. Superior Court* (1985) 37 Cal.3d 813, may be included in the calculation of the ratio of punitive to compensatory damages, regardless of whether the fees are awarded by the trier of fact as part of its verdict or are determined by the trial court after the verdict has been rendered.

In *Nickerson*, the insured was a paralyzed veteran who spent 109 days in a Veteran's Administration hospital after breaking his leg in a fall. Following his discharge, Nickerson sought benefits from Stonebridge Life Insurance Company under an indemnity benefit policy that promised to pay him \$350 per day for each day he was confined in a hospital for the necessary care and treatment of a covered injury. However, invoking the policy's definition of "necessary treatment," Stonebridge determined, without consulting the treating physicians, that the hospitalization was "medically necessary" for only 18 days and paid him on that basis.

Following trial, Nickerson obtain an award of \$31,500 in unpaid policy benefits and \$35,000 in damages for emotional distress. Plus, the jury awarded him \$19 million in punitive damages for fraud. After the jury rendered its verdict, the parties stipulated that the amount of attorney fees to which Nickerson was entitled under *Brandt* was \$12,500, and the court awarded that amount.

Stonebridge moved for a new trial seeking a reduction in the punitive damages award, which it argued was constitutionally excessive. The trial court agreed and granted Stonebridge a new trial unless Nickerson consented to a reduction of the punitive damages award to \$350,000, citing *State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408, for the proposition that a punitive-compensatory ratio exceeding single digits (i.e., 9 or 10-1) will ordinarily exceed constitutional bounds.

Nickerson argued that the amount awarded was in error, and that the proper calculation of the punitive-compensatory ratio when the parties have agreed to allow the trial court determine a component of the plaintiff's compensatory damages — the attorney fees plaintiff was compelled to expend to obtain the insurance benefits under *Brandt v. Superior Court* — includes rather than excludes those fees in the calculation of determining whether, and to what extent, the jury's punitive damages award exceeds constitutional limits.

The Supreme Court agreed, saying that under the *Brandt* decision, attorney's fees incurred to compel payment of the benefits are recoverable as an element of the plaintiff's economic damages, and are thus properly determined by the trier of fact — the jury — unless the parties stipulate otherwise. But in *Brandt*, the Court

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President's Message

Hello, and best wishes for a safe summer season. June came in hot and dry on the west coast and seems the same as we transition into early July.

What is the meaning of independent? If you do a quick internet search, you will find many pages for that definition. I read where it says to be independent, you are free from outside control; not depending on another's authority, self-governing, not influenced by others. If you then transition to independence, you will find that it is the state of being independent.



Paul Camacho
CAIIA President

July 4, 1776 was the day the Declaration of Independence was adopted by the Continental Congress. Since that day, our custom in the United States is celebrate with outdoor patriotic displays, have a picnic or barbeque. It is also a federal holiday and we see a lot of red, white and blue. If we are lucky enough, we also get to watch a major league baseball game (**Go Giants**) and eat apple pie. **We need to remember the past to appreciate where we are today.**

If you belong to the **CAIIA**, you have received an email to renew your membership. I hope you have taken the time to renew and will consider participating more than just paying your dues. The world of insurance is evolving and there is always a new court case that effects our industry. In order to be truly independent, you must always gather knowledge and be aware of changes ahead.

Look at the wine industry; when you think you have heard it all, they come out with a blue wine, which originates in Spain. Now you can celebrate with red, white and blue glasses of wine. This is a marketing approach, targeting the millennials. The insurance industry has to evolve as new risks are identified with the changing technology of living.

You will recall the CAIIA has offered courses in several parts of the State of California. On July 12, **SEED, Seminar for the Evaluation of Earthquake Damage will be held in Sacramento.** This class also includes the **California Fair Claims Settlement Practices Regulations** and is an 8-hour CE approved course by the California Department of Insurance. *If you did not receive our invitation, please go to www.caiaa.com and click on the link for the SEED and FCPSR Seminar.*

Save the date. We have scheduled our CAIIA Annual Meeting on October 6 and 7, 2016 in Long Beach. More details to follow.

Thanks for taking the time to read, see you next month.

*Registration Form
added to last page!*

Paul R. Camacho, ARM, RPA

Mission Adjusters
Paul@missionadjusters.com



NEWS FROM AND FOR OUR MEMBERS**We Need a New VP for the CAIIA**

Because of a recent resignation, the CAIIA needs a new Board member.

If you are interested, please contact Kim Hickey at khickey@sdginc.com or call her at 951 283-6410.

Hi All,

I just received the renewal information for the CAIIA. After having been a member of the CAIIA since 1972 and adjusting losses for 53+ years, I have decided to retire effective May 31, 2016. CAIIA is a great association and keep up the good work.

Thank you,

Carl W Pearson Adjusting

562-602-2002

Note from the Board of Directors: Congratulations to Carl for making the decision to retire and enjoy life with his fiancé!

News from Past President and Lifetime Achievement Award Winner

The Executive Office recently received an email from Past President and CAIIA Lifetime Achievement Award Winner, **Bill Suter**. He wanted to remind us that life doesn't stop at 90! At 94, Bill is still volunteering, traveling, dancing and just plan enjoying life. And he has entered the digital age., as he sent the message from his iPad! His email address is bill-suter1319@icloud.com. He would love to hear from long time friends.

Are You Curious About The State Legislature Does About Insurance?

The Executive Office receives a publication titled "This Week In Sacramento" from our former lobbyist John Norwood. If you would like to receive this, send your email address to harperclaims@hotmail.com and your email will be added to this interesting blog.

Sterrett Harper

Acting Executive Director



Happy Fourth of July to all
of you!

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had noted that “[a] stipulation for a postjudgment allocation and award by the trial court would normally be preferable since the determination then would be made after completion of the legal services [citation], and proof that otherwise would have been presented to the jury could be simplified because of the court’s expertise in evaluating legal services,” a suggestion and process that Nickerson and Stonebridge had opted to follow. But the *Nickerson* Court held that making such an election to submit the *Brandt* fee issue to the judge rather than the jury should not then limit the punitive damage award.

The Supreme Court cited *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1224, where the court held that “the amount of the jury’s award of *Brandt* fees . . . may be properly considered . . . in determining if the ratio of punitive damages to the tort damages award is excessive,” and agreed with Nickerson that because *Brandt* fees ordinarily qualify as compensatory damages, the fees should properly be considered in determining the ratio, regardless of whether the fees were awarded by the judge or the jury.

The *Nickerson* Court rejected Stonebridge’s argument that the unless awarded by a jury the *Brandt* fees are not part of the tort damages, and disapproved *Amerigraphics, Inc. v. Mercury Casualty Co.* (2010) 182 Cal.App.4th 1538, 1565, which stated, without elaboration or citation, that the trial court in that case had “properly excluded the amount of *Brandt* fees in determining the compensatory damages award, since the *Brandt* fees were awarded by the court after the jury had already returned its verdict on the punitive damages.”

The *Nickerson* Court summed up: “[W]e find no reason to exclude the amount of *Brandt* fees from the constitutional calculus merely because they were determined, pursuant to the parties’ stipulation, by the trial court after the jury rendered its punitive damages verdict. On the contrary, to exclude the fees from consideration would mean overlooking a substantial and mutually acknowledged component of the insured’s harm. The effect would be to skew the proper calculation of the punitive-compensatory ratio, and thus to impair reviewing courts’ full consideration of whether, and to what extent, the punitive damages award exceeds constitutional bounds.”

Anti- SLAPP Motion
Credit to: Low, Ball & Lynch, San Francisco, CA

Yasser Abuemeira et al. v. John F. Stephens, et al.

Court of Appeal, Second Appellate District (April 27, 2016)

What is a Strategic Lawsuit Against Public Participation (“SLAPP”)? Simply put, a SLAPP is a frivolous or malicious lawsuit brought primarily to produce a chilling effect on constitutionally protected free speech or the right to petition for redress of grievances. In the eyes of many, fundamental constitutional rights were being infringed upon through an abuse of the judicial process through SLAPP lawsuits. In 1993, in response to these concerns, California enacted legislation to prevent SLAPP lawsuits. This legislation is known today as the California Anti-SLAPP statute, codified at CCP § 425.16 et seq. This case considered whether the defendants’ sharing of a video of their altercation with the plaintiffs to family, friends, law enforcement and news agencies was of sufficient “public interest” that it was not subject to an Anti-SLAPP motion.

This case arose out of a July 15, 2012 roadside physical altercation between neighbors in a gated community in Bell Canyon, California. On one side of the scuffle were defendants/appellants John F. Stephens (“Stephens”), a California attorney and Razmik B. Ekmekdjian (“Ekmekdjian”). On the other side were plaintiffs/respondents Yasser Abuemeira (“Yasser”) and his wife Daria Abuemeira (“Daria”).

Both parties have varying accounts both of what initiated the altercation and what took place during it. Stephens recorded some of the incident on his cellular phone, including expletives and insults hurled by the participants. Eventually, a third party intervened and stopped the fight. The Sheriff’s Department arrived on scene and arrested both Yasser and Ekmekdjian. The District Attorney filed charges against Yasser, but later dismissed them in the interests of justice because it was not clear which party was the initial aggressor.

Stephens and Ekmekdjian published Stephens’ cell phone recording of the incident to attendees of a homeowner association meeting and to a television news reporter. During both publications they described the altercation as a “hate crime” against homosexuals. Stephens and Ekmekdjian are a same-sex couple. Yasser stated that he did not know Stephens and Ekmekdjian before the incident, nor did he know their sexual orientation. The Abuemeiras claim that Stephens and Ekmekdjian doctored the video to portray them in a bad light. An opinion by the Abuemeiras’ expert stated that the GPS coordinate of the recording showed an address in West Hills, suggesting the recording was edited, post-filming. Continued on page 5

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The Abuemeiras filed a second amended complaint for damages. The eight causes of action against Stephens and Ekmekdjian had to do with the “detention” of Yasser by Stephens and Ekmekdjian, the verbal and physical altercation and defamation.

Stephens and Ekmekdjian filed a special motion to strike the second and fourth causes of action of the second amended complaint based on the California Anti-SLAPP law at CCP § 425.16 and the litigation privilege at Civil Code § 47(b). Stephens and Ekmekdjian characterized the altercation as “a hate crime against a homosexual couple,” and thus a public issue. The trial court denied defendants’ Anti-SLAPP motion. The trial judge stated: “The statements in question do not come within the litigation privilege. This case involves a dispute between private persons. The efforts of the defendants to publicize it do not transform it into an issue of public interest.”

Regarding appellants’ Anti-SLAPP argument, the Appellate Court looked to the language of C.C.P. § 425.16 and its progeny of cases which provide for a two-pronged test in sustaining an Anti-SLAPP motion. First, the trial court must find that the moving party met a “threshold showing that the challenged cause of action is one arising from protected activity” [a Constitutionally-protected right]. Secondly, if that threshold is met, the trial court must also find that the Plaintiff has “demonstrated a probability of prevailing on his claim.” (*Talega, supra*, 225 Cal.App.4th 722 at 728). Secondly, the Court noted that C.C.P. §425.16(e)(3)(4) requires that the complained of communications must concern “an issue of public interest.” Prior courts had held that a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.”

Here, Stephens’ conduct did not involve an act in furtherance of his constitutional right of petition for free speech in connection with a public issue, and Stephens did not present any evidence to establish that the Abuemeiras were anyone other than private, anonymous parties or that the dispute was anything other than a private controversy.

The Appellate Court also noted that Stephens did not establish that the speech recipients were connected to the litigation, nor that his communications achieved any objective of the litigation. The Court held that that appellants’ transmittal of the Stephens’ cell phone video to third parties did not fall under the litigation privilege at Civil Code § 47(b) because republications to nonparticipants in the action are not privileged and are actionable unless privileged on some other basis.

DOI Press Releases

LA County teacher charged with workers' compensation fraud and child abuse

VALENCIA, Calif. - Eric Johnson, 61, of Valencia, was arrested today by Department of Insurance detectives, at his place of employment in Lancaster, on two felony counts of insurance fraud and one felony count of child abuse after an incident with a student.

Johnson, a teacher for the Los Angeles County Office of Education, filed a workers' compensation claim after an altercation with a 17-year-old minor at the Camp Mendenhall juvenile facility.

Johnson claimed the student initiated the altercation striking him in the jaw and lip. Johnson stated the minor then shoved him into a wall, but video evidence revealed Johnson actually instigated the physical altercation and assaulted the minor. Victim and witness statements corroborated the video evidence. According to the evidence, Johnson did not sustain any physical injuries.

The Los Angeles County Office of Education paid approximately \$1,000 in losses because of Johnson's allegedly fraudulent claim. Early discovery of Johnson's claim likely prevented larger losses for the county.

Johnson was booked into the Los Angeles County Sheriff's detention facility. This case is being prosecuted by the Los Angeles District Attorney's office.

CAIIA 2016 Educational Event

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

Date: July 12, 2016
Location: Kniesels Collison Center
1200 Del Paso Road, Ste 140
Sacramento, CA 95834

SEED Seminar (8 hours Adj CE Credit)

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 Seminar Only (2 hours Adj CE Credit)

Time: Registration 7:30- 8:00 AM
FCSPR & SIU 8:00- 10:00 AM

Cost: CAIIA Member \$ 40.00
Ins Co Employee \$ 50.00
Non-Member I/A \$ 60.00

Paying by Credit Card:

Type of Card: _____

Amount: _____

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Expiration Date: _____

Billing Address: _____

Signature: _____

Email completed form to: rkern@sgdinc.com or

Fax to: (619) 548-8723

Paying by Check:

Make checks payable to: CAIIA

Mail registration & payment to:

CAIIA Education Provider Director
Richard Kern
c/o SGD, Inc.
3530 Camino Del Rio North, Ste 204
San Diego, CA 92108-1745

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

CCNC, Sacramento Sept. 24-16, 2016. Go to www.claimsconference.org to register:



2016 Claims Conference of Northern California, September 14th - 16th Hyatt Regency Downtown Sacramento

President's Welcome

We are very excited for you to join us for the 24th Annual Claims Conference of Northern California September 14 - 16 at the Hyatt Regency Downtown Sacramento. The CCNC Education Committee has worked diligently on compiling our educational schedule offering CE credits that clearly place priority on new innovation, technological advances and collaboration of our total claims processes. You will find a terrific network of professionals to help you with the resources you need to better manage your claims. You can register and view our full class descriptions at www.claimsconference.org. Look forward to seeing you at the 2016 CCNC!

Tami Umland & Michelle Windsor-Baughman

Hyatt Regency Sacramento

1209 L Street - Sacramento, CA
95814

CCNC group rate available at:

www.claimsconference.org/location

Day 1 Wednesday September 14th

4:00 - 6:00 **Hector Alvarez**: Workplace Violence from the Insurance Industry Professional's Point of View

Day 2 Thursday September 15th

8:30 - 9:30 **Keynote Speaker - Matt Paxton**
Matt Paxton is one of the top Hoarding Clean-Up experts in the United States. Paxton is the founder of Clutter Cleaner, author of *The Secret Lives of Hoarders* and has appeared in over 65 episodes of the television show *HOARDERS*.

10:00 - 12:00 **Garrett McGinn • Stephen Roper**: Investigations in the Age of Geo Tagging (Social) Data

10:00 - 12:00 **Kathleen Taylor**: Bio Recovery Services

10:00 - 12:00 **Eloy Cisneros**: Common Misunderstandings of Hazmat Regulatory Requirements

1:00 - 4:00 **Matt Paxton**: Extreme Clean-Up: Handling a Hoarding Dilemma

1:00 - 3:00 **Andy Downs**: Stop Look and Listen: Strategies for Addressing the Unusual Claim

1:00 - 3:00 **Brian Schupbach**: Commercial Large Loss Estimating with Xactimate

3:30 - 4:30 **Jim Nolt**: What Kind of Expert Do I Need for this Loss?

3:30 - 4:30 **Jeff Taxier • Jon Sommers**: Mechanics of Estimate Presentation

Day 3 Friday September 16

8:30 - 9:30 **Dale Banda**: Identifying and Reporting Fraud, Understanding the Regulations and Surviving a Compliance Audit

9:30 - 10:30 **Mathew Scott**: Computer Forensic Investigations, Litigation and Complex Cyber Security Claims

9:30 - 10:30 **Vinh Pham**: Clandestine Drug Lab Assessment & Clean Up

11:00 - 12:00 **Julian Pardini**: The Adjuster's Role in Preparing for Examinations Under Oath

11:00 - 12:00 **Steven Viani**: Drought Related Ground Subsidence in the Valley

11:00 - 12:00 **Kelley Chang**: Advanced Excel

1:00 - 4:00 **Ruth Griffith**: Ethics

1:00 - 3:00 **Robert Donahue**: Claim Expectations & How Technology Has Changed Them

1:00 - 2:00 **Kevin Jones**: Contents Restoration vs Total Loss; Stop Throwing Away Money

Register Now!

www.claimsconference.org

Up to 13 CE credits pending approval with RPA and CA/TX DOI (not retro); MCLE pending approval

Sponsor: Jennifer Pinney - jenniferpinney@ordn.com
Exhibit: Lisa Winn - lwinn@pcqhome.com
Attend: www.claimsconference.org

ON THE LIGHTER SIDE...**"Adult" Truths**

1. Sometimes I'll look down at my watch 3 consecutive times and still not know what time it is.
2. Nothing sucks more than that moment during an argument when you realize you're wrong.
3. I totally take back all those times I didn't want to nap when I was younger.
4. There is great need for a sarcasm font.
5. How the hell are you supposed to fold a fitted sheet?
6. Was learning cursive really necessary?
7. Map Quest or Google Maps really need to start their directions on # 5. I'm pretty sure I know how to get out of my neighborhood.
8. Obituaries would be a lot more interesting if they told you how the person died.
9. I can't remember the last time I wasn't at least kind of tired.
10. Bad decisions make good stories.
11. You never know when it will strike, but there comes a moment when you know that you just aren't going to do anything productive for the rest of the day.
12. Can we all just agree to ignore whatever comes after Blu-Ray? I don't want to have to restart my collection... again.
13. I'm always slightly terrified when I exit out of Word and it asks me if I want to save any changes to my ten-page technical report that I swear I did not make any changes to.
14. I keep some people's phone numbers in my phone just so I know not to answer when they call.
15. I think the freezer deserves a light as well.
16. I disagree with Kay Jewelers. I would bet on any given Friday or Saturday night more kisses begin with Bud Light than Kay.
17. I wish Google Maps had an "Avoid Ghetto" routing option.
18. I have a hard time deciphering the fine line between boredom and hunger.
19. How many times is it appropriate to say "What?" before you just nod and smile because you still didn't hear or understand a word they said?
20. I love the sense of camaraderie when an entire line of cars team up to prevent a jerk from cutting in at the front. Stay strong, brothers and sisters!
21. Shirts get dirty. Underwear gets dirty. Pants? Pants never get dirty, and you can wear them forever.
22. Even under ideal conditions people have trouble locating their car keys in a pocket, finding their cell phone, and Pinning the Tail on the Donkey - but I'd bet everyone can find and push the snooze button from 3 feet away, in about 1.7 seconds, eyes closed, first time, every time.
23. The first testicular guard, the "Cup," was used in Hockey in 1874 and the first helmet was used in 1974. That means it only took 100 years for men to realize that their brain is also important.

(Ladies ... Quit Laughing!)

It just gets better as you get older, doesn't it?

I Would Like To Add One.

At What Point-In-Life Do We Become "OLD PEOPLE " ??

CAIIA REGISTRATION FORM
California Association of Independent Insurance Adjusters
 ANNUAL FALL CONVENTION– October 6 & 7, 2016



1126 Queens Highway, Long Beach, CA 90802-6390 Phone: (877) 342-0742

Call above number for Reservations must be made by Tuesday, September 6, 2016 for the CAIIA group rate of \$149.00 for King or \$179.00 for Family/2 Queens (plus taxes and other fees). Prevailing rates may apply after this date or when the group rooms are sold out, whichever occurs first. Rooms are subject to availability. Self-parking discounted rate of \$15.00.

Your Name _____ Spouse/Guest _____
 Company _____
 Address _____
 Phone _____ Fax _____
 E-Mail _____

EVENT	COST	#TICKETS	TOTAL PRICE
MEMBER CONVENTION Package (*) (Includes reception, breakfast, CE Class/lunch/dinner)	\$150.00	# _____	\$ _____
Spouse/Guest fee (***) Name _____	\$100.00	# _____	\$ _____
Non-Member (**) Convention Package (Includes reception, breakfast, CE Class/lunch/dinner)	\$175.00	# _____	\$ _____
3 Hour CE Class (Includes, breakfast, presentation, lunch)	\$100.00	# _____	\$ _____
President's Gala Dinner/Reception	\$100.00	# _____	\$ _____
Grand Total payable			\$ _____

SCHEDULED EVENTS

Please specify which events you and/or your spouse/guest will attend by placing a check mark in the box next to the event. **Please make your checks payable to CAIIA or pay by credit card.**
 Complete a separate form for each registrant and additional guest. **Mail Registration Form & payment to:**

	You	Spouse/Guest
10/01 – 6:30 P.M. Welcome Reception	[]	[]
10/02 -- 8:00 A.M. Registration/Breakfast	[]	[]
10/02 – 9:00 A.M. Seminar (3 ce credits – TBA)	[]	[]
10/02 – 12:00 P.M. Lunch	[]	[]
10/02 – 1:30 P.M. Business Meeting	[]	[]
10/02 – 6:30 P.M. Reception/cocktail Hour	[]	[]
10/02 – 7:30 P.M. President's Inaugural Dinner	[]	[]

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Washington & Finnegan, Inc.
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(*) **Members only.**
 (**) **We welcome the attendance and participation of insurance company and risk management claims personnel and attorneys at the President's Gala Dinner Event, the Educational Seminars, and Luncheon following seminars.**
 (***) **Spouse/Guest fee includes alternative activity, breakfast and dinner on Friday. (Possible Thunderbird Lodge / Whitell Mansion Tour)**