

CAIIA Member of the Year

Sam Hooper, President of the CAIIA, is seeking nominations for CAIIA Member of the Year. This is a high honor of the Association. If you feel someone is deserving of this honor, please complete the application in this issue and send it to Sam as shown on the application.

Volunteers Needed for CCNC

Every year the CAIIA exhibits at the Claims Conference of Northern California (CCNC). If you are planning on attending the event on September 9 and 10, 2010, in downtown Sacramento at the Hyatt and would like to volunteer some time at the CAIIA booth, please contact Sterrett Harper by email at harperclaims@hotmail.com.

It is a great way to meet and greet many people in the industry and get some great education. The CCNC has continuing education credits approved by the California Department of Insurance (DOI) for independent adjusters and other licensees of the DOI.

Insureds Still Need to Read the Fine Print

By Stephanie N. Rachel of Willis & DePasquale, Orange, CA

In *Hervey v. Mercury Casualty Company*, (June 17, 2010), Case No., B215470, the California Court of Appeal, Second Appellate District, affirmed the trial court's order sustaining Mercury Casualty Company's demurrer without leave to amend and held the title of an endorsement does not establish ambiguity when the terms of the provision are fully explained within the policy.

Lauren Hervey purchased an auto policy from Mercury Casualty Company which included medical expense and uninsured motorist ("UM") coverage. The UM section allowed Mercury to offset medical expenses from payments due to the insured under the UM coverage. Hervey's policy also included a medical expense endorsement entitled "MEDICAL EXPENSE- NO EXCESS, NO REIMBURSEMENT." The endorsement deleted a condition and an exclusion that only applied to Mercury's right to reimbursement for recovery by the insured against a third party tortfeasor. The endorsement also stated the remaining policy terms and conditions remained unchanged.

Following an accident with an uninsured driver, Hervey made a medical expense claim, which was paid by Mercury. Hervey also claimed amounts

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Status Report Now Available by E-mail

If you would like to receive the *Status Report* via e-mail please send your e-mail address to info@caiiia.org.

CAIIA Newsletter

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PRESIDENT'S MESSAGE

GOOD NEWS

Many of us have been negatively affected by the national economic decline over the last few years. To reduce expenses, we have seen carriers reduce the employment of independent adjusters, investigators and other vendors. Instead, a number of insurance companies and self-insured entities have relied on their own staff (frequently reduced) to perform a lot of work previously assigned to outside vendors. Consequently, the number of assignments declined during recent years.

Also during this period, many insurers have converted to electronic investigation and telephone adjusting protocols. This includes taking statements over the phone and on-line interpreting services. Use of staff outside adjusters, contractor panels and staff counsel grew during recent years.

However, I recently reviewed several publications evaluating the claims adjusting, appraisal, examining and investigation projected growth over the next ten years; and the future looks positive. My principal resource included the Federal Government Bureau of Labor Statistics Occupational Outlook for 2010-11, of the United States Department of Labor. You can review this information on your own, or through many other sources. Although it appears certain changes in how we approach the business will be needed, the future looks positive.

Following are some of the statistics, which in my opinion, suggest a lot of business for independent vendors is out there and more growth is projected:

-“Adjusters, appraisers, examiners, and investigators held about 306,300 jobs in 2008. Insurance carriers employ 49% of claims adjusters, appraisers, examiners and investigators; agencies, brokerages, and other insur-



ance related activities, such as private claims adjusting companies, employed another 24 percent...about 2 percent of adjusters, appraisers, examiners, and investigators were self-employed.”

“Job opportunities for claims adjusters and examiners will be best in the health insurance industry as the industry seeks to minimize the number of paid claims, and in the areas susceptible to natural disasters such as the Gulf coast or West coast. Hurricanes in Florida or wild fires in California, for example, will continue to spur demand, and opportunities with smaller independent firms will be particularly good. ...workers will still be needed to contact policyholders, inspect damaged property, and consult with experts.”

The Bureau projected a 7% growth from 2008 through 2018 for the industry need for claims adjusters, appraisers, examiners, and investigators.

Considering the unemployment rate has steadily increased, this trend appears to bode well for independent adjusters.

SAM HOOPER

President - CAIIA 2009-2010

Insureds Still Need to Read the Fine Print

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under the UM coverage. Mercury settled the UM claim, but offset the UM benefits by amounts paid Hervey under the medical expense coverage. Hervey sued Mercury, alleging it breached the policy by offsetting the UM payments with the amounts paid under medical expense coverage. Mercury demurred to the complaint, which the trial court sustained without leave to amend.

On appeal, Hervey contended that the language in the medical expense endorsement, and specifically the large print heading on the medical expense endorsement along with the checked box for “No Reimbursement” next to the medical expense coverage on the Declaration page, conveyed that Mercury would not seek reimbursement or offsets of medical expense payments as a result of payments from any source. Hervey also claimed that the retention of the right of reimbursement was buried in the policy so that it was not “conspicuous,” “plain and clear.”

The Court of Appeal found that the medical expense endorsement did not delete any provision of the UM coverage, thus leaving untouched the reduction of UM coverage to be paid by Mercury by the medical payments made to Hervey. The Court also concluded that the medical expense endorsement heading “MEDICAL EXPENSE- NO EXCESS, NO REIMBURSEMENT” accurately described what the medical expense endorsement concerned, which is the deletion of the provision for reimbursement of medical payments from a recovery the insured obtained from a third party. The Court noted that this case is not a situation where the provision would not reasonably be expected. An insured would not normally expect that he or she would receive from the insurer two payments for the same injury, once under the medical expense coverage of the policy and again under the UM coverage of the policy.

Insurance Law News

Submitted by Smith, Smith & Feeley, LLP - Irvine, CA

Automobile Policy “Step-Down” Provisions Limiting Coverage for Permissive Users Are Valid if They Are Conspicuous, Plain and Clear

The California Court of Appeal has held that an automobile liability policy’s “step-down” provision, which reduced liability limits for permissive users, was “conspicuous, plain and clear” and thus limited the coverage that was available to a permissive user. (*Dominguez v. Financial Indem. Co.* (2010) 183 Cal.App.4th 388)

Facts

Lucia Dominguez (*Dominguez*) was allegedly injured in an automobile accident caused by Ningju Qui (*Qui*). The vehicle *Qui* was driving was owned by, and used with the permission of, Michael Welch (*Welch*). *Welch* was the named insured on an auto policy issued by Financial Indemnity Company (*FIC*), and *Qui* as a permissive user also qualified as an insured on the *FIC* policy.

The *FIC* policy’s declaration page stated that the bodily injury liability limits were \$100,000 each person and \$300,000 each accident. However, the policy’s face sheet, table of contents and liability section all referred to a “Reduction in Coverage” on page 7 of the policy. On page 7, under a heading labeled “REDUCTION IN COVERAGE,” the policy limited coverage for permissive users to the minimum limits required by the applicable financial responsibility laws. In addition, the policy’s insuring agreement stated that “[t]he limits shown on the Declarations page are subject to reduction to the state mandatory minimum of \$15,000 each person, \$30,00 each accident ... where there is a permissive user of the ‘insured vehicle.’”

Dominguez filed an action against *Qui* and *Welch* for her injuries arising out of the accident. While that action was pending, *Dominguez* also filed an action for declaratory relief action against *FIC* to obtain a determination as to what limits were available to the permissive user, *Qui*. *FIC* prevailed in the declaratory relief action, with the trial court concluding that the “step-down” permissive user limitation was sufficiently “conspicuous, plain and clear.” *Dominguez* appealed.

Holding

The Court of Appeal affirmed. Insurance Code §11580.1 (b)(4) provides that an automobile policy must provide the same coverage to a permissive user as is afforded the named insured, but only up to the limits of the Financial Responsibility Law. However, a policy which includes such a limitation on coverage and will be subjected to “close scrutiny.” The Court of Appeal noted that it is the insurer’s burden to make its coverage exclusions and limitations “conspicuous, plain and clear.” The court also observed that in interpreting an automobile policy’s permissive user limitations, the court must examine the reasonable expectations of the insured car owner, not the reasonable expectations of the permissive user.

The Court proceeded to hold that the permissive user limitation in the *FIC* policy was “conspicuous” and distinguished the limitation from that in *Haynes v. Farmers Ins. Exch.* (2004) 32 Cal.4th 1198 because of the location of the limitation in the *FIC* policy. According to the Court, the *FIC* policy notified the insured “early and often” that a permissive user had lower limits

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Insurance Law News

Submitted by Smith, Smith & Feeley, LLP - Irvine, CA

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than the named insured.

The Court also found the limitation “plain and clear” because the policy did more than simply state that a permissive user was only covered to the extent of the “Financial Responsibility Law.” On the first page of the FIC policy, the insuring agreement provided that the limits in the Declarations are subject to a reduction “to the state mandatory minimum of \$15,000 each person, \$30,000 each accident, and \$5,000 for property damage when there is a permissive user of the insured vehicle.” According to the Court, that was “plain and clear.”

Comment

Provisions which limit the amount of coverage available to permissive users are subject to close judicial scrutiny. However, as this case makes clear, if an insurer uses language which is “conspicuous, plain and clear,” the insurer can in fact limit a permissive user to the statutory minimum limits.

Weekly Law Resume

Submitted by Low, Ball & Lynch, Attorneys at Law - San Francisco, CA

Damages - Medical Expenses - Reduction

Ana Silva Yanez v. Soma Environmental Engineering, Inc., et al. Court of Appeal, First District (June 24, 2010)

This is another in the series of cases attempting to wrestle with the issue of whether a plaintiff is entitled to recover the full amount of the medical bills that have been incurred, or only the amount actually paid to the medical provider. Ana Yanez sued Soma Environmental Engineering, Inc. and others for injuries suffered in a motor vehicle accident. At trial, the full amount of her medical bills were admitted into evidence. Yanez was awarded \$150,000 in damages, including \$44,519.01 for past medical expenses. Soma moved to reduce the medical expenses to \$18,368.24, the amount actually accepted by medical providers as payment in full for the services rendered. The court reduced the medical expenses by a total of \$21,355.66 and entered an amended judgment. Yanez appealed. The Court of Appeal reversed. The Court stated the collateral source rule, which prohibits its evidence of benefits from independent or collateral sources, such as insurance, entitled Yanez to recover the full amount billed to her and her insurers by her healthcare providers. The Court noted that the issue of whether amounts written off by healthcare providers pursuant to its contract with a private insurer may be recovered as damages under the collateral source rule is now before the California Supreme Court in *Howell v. Hamilton Meats & Provisions, Inc.*, (2009) 179 Cal.App.4th 686.

This Court decided the amount written off by Yanez’ healthcare providers constituted collateral benefits of her insurance. The Court stated the Hanif/Nishihama line of cases were inconsistent with the collateral source rule, at least as applied to private insurance cases. This Court felt Hanif only applied in the Medical context. The Court concluded that the discounts accepted by the providers were part of the benefits of Yanez’ health insurance, lowering the cost of her medical care, her deductible and making insurance affordable for employers and employees in a working context. Thus, the collateral benefit included not only the cash the private insurers paid for medical care, but also the financial, administrative and marketing savings the providers obtained that induced and permitted them to accept a discounted rate of payment for their services to Yanez. Thus, Hanif’s holding that the reasonable value of medical services can never be greater than the cash paid or liability incurred for the bills could not be extended to the private insurance context. The rate discounts constituted collateral benefits and the trial court erred by reducing the economic damages by those discounts.

The Court held that a trial court has no authority to allow evidence of the reduced amount accepted by medical providers. The Court further stated that post-verdict hearings to reduce the economic damages to the amount actually accepted by providers lacked foundation as a matter of law or policy.

The case was reversed and remanded to the trial court to enter a new judgment reinstating the damages established by the jury verdict.

COMMENT

In a 40-page dissent, it was argued that it was time to re-examine this area of law. The dissent argued that the jury should be allowed to hear both the amount paid and the amount incurred, and decide for themselves the reasonable value of medical care provided.

CAIIA REGISTRATION FORM
California Association of Independent Insurance Adjusters
ANNUAL CONVENTION & GOLF TOURNAMENT –October 21 & 22, 2010



Double Tree Hotel
One DoubleTree Drive
Rohnert Park, CA 94928

Mention California Association of Independent Insurance Adjusters or reference the reservation code "CAI" for special room rates of \$120/Nt. Plus tax. Attendees must make their own hotel reservation.

Your Name _____ Spouse/Guest _____

Company _____

Address _____

Phone _____ Fax _____

E-Mail _____

EVENT	COST	#TICKETS	Total Price
Member Convention Package (Includes Golf Dinner, complete convention schedule)	\$ 175.00	_____	\$ _____
Non-Member (***) Convention Package (Includes Breakfast, CE Class/ lunch/dinner)	\$ 190.00	_____	\$ _____
Spouse/guest fee (***)	\$ 100.00	_____	\$ _____
Name _____			
4 Hour CE Class (Includes breakfast,presentation, lunch)	\$100.00	_____	\$ _____
President's Gala Dinner/Reception	\$ 75.00	_____	\$ _____
Grand Total Payable			\$ _____

SCHEDULED EVENTS

Please specify which events you and/or your spouse/guest will be by placing a check mark in the box next to the event. Complete a separate form for each registrant and additional guest.

Please make your checks payable to CAIIA or pay by credit card. Mail Registration Form & payment to:

You Spouse/Guest

10/21 - 10A.M.	Golf Tournament			
(Registration Forms at www.caiiaolftournament.com)				
10/21 – 6:00 P.M.	Golf Dinner (Foxtail Golf Club)	[]	[]	Barrett Claims Service
10/22 – 7:00 A.M.	Registration/Breakfast	[]	[]	P.O. Box 282
10/22 – 8:00 A.M.	Seminar	[]	[]	Ukiah, CA 95482
10/22 –12:00 P.M.	Lunch	[]	[]	barrettclaims@sbcglobal.net
10/22 – 1:30 P.M.	Business Meeting (*)	[]	[]	707-462-5647
10/22 - 10:00 AM	Spouse/Guest. Lunch (***)	[]	[]	FAX 707-467-1578
10/22 – 6:30 P.M.	Reception/Cocktail Hour	[]	[]	
10/22 – 7:30 P.M.	President's Inaugural Dinner	[]	[]	

(*) **Members only**

Credit Card:	AME <input type="radio"/> VISA <input type="radio"/> M/C <input type="radio"/>	3 Digit Security #	
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Card Address (City/State/Zip)			

(**) 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, lunch and dinner on Friday. For details on spouse activity: www.flyinghorse.com

Early registration is encouraged. Cut-off date for contracted room rate is September 20,2010.

**CAIIA's 4th Golf Tournament
October 21, 2010 (Rohnert Park, CA)**

We wish to recognize the following firms who have already registered to sponsor this splendid event:

Tee Sponsors (9 spots left)

All County Environmental & Restoration
Alliance Environmental (Longest Drive)
Belfor
American Geotechnical
PW Stephens Environmental, Inc.
The Restoration Cleanup Company, Inc.
FRSTeam by Custom Commercial
Willis DePasquale, LLP (Closest to the Pin)
PT&C Forensic Consulting Services

Dinner Sponsors (Sold Out)

Haag Engineering
Heritage Companies, Ron Oates

Beverage Cart Sponsors (Sold Out)

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Able Restoration, Inc.

Putting Contest (Sold)

Tucknott Electric Co.

Secure your sponsorship or place on the player roster while you can! Visit www.caiigolftournament.com for details and registration forms.



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- Medical Records and Malingering: You Can't Always Get What You Want
 - Technology in Collision Reconstruction
- Electronic Discovery - Privilege Issues, Work Product
- Ethics and the Adjuster - A Crime Scene Investigation
 - Slip, Trip & Fall
- The Mortgage Crisis and It's Impact On Property Claims
 - Motor Cargo Theft
- What You Should Know About Detecting and Fighting Fraudulent Claims

Thank you to our
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Early-Bird Registration Now Open

www.ClaimsConference.org