

DOI Press Release



Commissioner Lara and United Nations Announce Nation's First Sustainable Insurance Roadmap to Reduce California's Climate Risks

LOS ANGELES, Calif. – The California Department of Insurance and the United Nations Environment Program (U.N. Environment) have launched a yearlong effort to develop a Sustainable Insurance Roadmap to confront California's climate risks. Insurance Commissioner Ricardo Lara and Butch Bacani, who leads U.N. Environment's Principles for Sustainable Insurance (PSI)—the largest collaboration between the United Nations and the insurance industry—announced the groundbreaking initiative at a roundtable co-hosted with the UCLA School of Law and UC Berkeley School of Law.

This is the first time the United Nations has partnered with an American state to create a sustainable insurance strategy and action plan that would tackle the growing risks of climate change. Last year, California experienced the deadliest and most destructive wildfires in the state's history, resulting in more than \$12 billion in insured losses, making it the world's costliest disaster.

"We have a historic opportunity to utilize insurance markets to protect Californians from the threat of climate change, including rising sea levels, extreme heat and wildfires," **said Insurance Commissioner Ricardo Lara**. "Working with the United Nations, we can keep California at the forefront of reducing risks while promoting sustainable investments."

"A sustainable insurance roadmap will enable California to harness risk reduction measures, insurance solutions, and investments by the insurance industry in order to build safer, disaster-resilient communities, and accelerate the transition to a low-carbon, sustainable economy," **said U.N. PSI leader Butch Bacani**. "With Commissioner Lara's vision and leadership, we look forward to working together with insurers and key stakeholders to drive ambitious climate action now, in line with the aims of the Paris Agreement on Climate Change."

California is the largest insurance market in the U.S., and one of the largest in the world. The California Department of Insurance was one of the first insurance regulatory and supervisory authorities in the world to sign U.N. Environment's Principles for Sustainable Insurance and commit to tackling global sustainability challenges such as climate change, biodiversity loss and ecosystem degradation, pollution, and social and financial exclusion.

The California Sustainable Insurance Roadmap is envisioned to pave the way for innovative risk management, insurance and investment solutions that reduce climate risks and protect natural ecosystems. For example, new insurance products could be developed to promote cooler streets and renewable energy. In other countries, insurance solutions for coral reefs and mangroves are emerging as these natural ecosystems have been proven to significantly

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President's Message

I'm back! Whoever said, "Time flies when you are having fun" was correct. It seems as though I was just telling you that I was leaving on my European vacation and now it's time to write another "President's Letter".

As many of you may recall, I went overseas to visit the family and had a lovely time in both Denmark and Italy, despite a heat index of 103°. It seems the heat got even worse after I left with record temperatures everywhere, even in Denmark! I cannot help but wonder how the insurance industry worldwide will be altered in the coming years due to climate change, a complex risk without a historical record to provide any guidance.



John Ratto
CAIIA President

Fortunately, when I returned to California there had been no heat waves or great fires, although there was that earthquake. The pile-up on my desk wasn't too bad either, only 3 claims waiting for me and 4 more the first week back (just kidding, that's a load!). To make it worse we are down a staff person who left the day I returned, so that she could visit her family in the UK for three weeks. (Who said she could do that?)

Despite the pre-vacation pressure to wrap-up open claims files, I headed out on my vacation with my mind at ease thanks to one of my comrades in the world of independent claims, and a man I respect very much, who offered to cover claims for a me while I was away. Thank you to Paul Camacho of Mission Adjusters located 182 miles from Oakland (yeah, I Googled that)! Fortunately, he didn't have to come down here during my absence, but the offer certainly was very much appreciated.

This point brings me to one of my most valued aspects of the C.A.I.I.A. – the fact that we not only get to reach out to each other for advice, but we can reach out for help as well. For the longest time I was very protective of my clients, never wanting to share any details of my clients' identity or share my territory with any other IA firm. It seems kind of silly now, as I have come to realize that unless you are a horrible adjuster who just lucked into keeping the same clients for years and years, it is unlikely that carriers are simply going to take all of the files they would have given to you and now give them to the individual who did you a favor and helped cover your desk while you were away on vacation. That is not to say that something like this hasn't happened in the past, but I realize that one of the best parts of our organization is that our members value ethical conduct and are solid all-around good people who support each other. I am grateful and proud to be a member of such a fine group of professionals!

A quick update on the fall event to be held in Southern California: We are still working on a venue and as soon as we have a specific date and location, we will let you know. In the meantime – It is still summertime, so enjoy it while you can! "Warm" regards,

John Ratto, President



NEWS OF AND FOR OUR MEMBERS

SAVE THE DATE

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

August 27-29,2019 Claims Conference of Northern California, Lake Tahoe, CA

TBD CAIIA Fall Meeting

California Department of Insurance Curriculum Board Meeting and Legislative Update

I attended the California Department of Insurance Curriculum Board Meeting on July 18, 2019. Recently, the Board reviewed the Insurance Adjuster License examination objectives and approved those objectives through 2022. The only addition to the exam is a potential question regarding pet insurance.

Between January and June 2019, the pass rate for first time Insurance Adjuster exam takers was 41%. For repeat examinations, the pass rate was 30%.

Recent legislation impacting Insurance Adjusters is Senate Bill 240 which is anticipated to go into effect in September or October of this year and came about as a result of the recent devastating wildfires.

Insurance Adjuster Act• SB 240 (Dodd).This bill would require CDI to prepare and distribute to all insurers, licensed independent insurance adjusters, annually, a notice regarding the most significant California laws pertaining to property insurance policies and an adjuster claims handbook for adjusting in California that includes information relevant to evaluating damage caused by an emergency, catastrophe, disaster, or other similar occurrence, including wildfires.

SB 240 would also require, during a declared emergency, insurers, adjuster firms, and qualified managers to register emergency adjusters and provide certification, under penalty of perjury, that the adjusters have read and understand the most recent CDI notice and adjusting claims handbook.

In addition, after a declared state of emergency, SB 240 would require an insurer to provide a claimant with a copy of the most recent CDI notice within 15 calendar days from the date on which the insurer received notice of the claim. Furthermore, this bill would require an insurer to provide an insured, with a disaster claim, a "primary point of contact" if the adjuster assigned to the homeowner's claim is changed three times in a six-month period.

The "adjuster claims handbook" referred to above is in addition to the Fair Claims Settlement Practices Regulations. Also, all registrations will be done electronically.

Richard Kern
CAIIA Secretary/Treasurer

Wanna getaway?

See page 8 for more details on the CCNC in Lake Tahoe.



Swimming Pool Diving Accident

Credit to Garrett Engineers, Long Beach, CA



This case involves a typical backyard swimming pool. It was an in-ground, plastered concrete, free-form shaped pool, measuring about 16 feet wide and 32 feet long. It had the usual hardscape walkways around it, and it was properly fenced, properly maintained and properly cleaned.

And what backyard swimming pool would be complete without a diving board? This pool had a typical springy diving board, mounted at approximately knee height at the deep end of the pool. The “jump board” was installed by the pool contractor when the pool was built a number of years earlier.

True to the stereotype, a pool party was in progress on the hot afternoon of the incident. There were lots of people, lots of food, lots of laughter, lots of adult beverages, and lots of showing off.

One of the stars of the show dived off of the jump board 4-5 times to demonstrate his skills. He then decided to do a back flip into the water. After entering the water, he plunged down to the bottom and hit his head. Instead of his usual quick return to the surface, he remained at the bottom of the pool, unconscious. The startled bystanders quickly pulled him out of the pool and called for the paramedics. The paramedics transported him to the local hospital. After appropriate tests, the doctors diagnosed him as inebriated, accompanied by a concussion and a severe neck injury.

Garrett Engineers was called in to evaluate the cause of the accident.

While the water was clean and clear at the time of incident, the pool had essentially been locked down and abandoned after the accident. At the time of our inspection, the pool water was green with algae and the bottom could not be seen. Also, the water level was approximately 10 inches below the normal level required for the pool filter to function.

There are controlling standards in pool design and construction. In this case, NSPI-5 2003 (National Spa and Pool Institute) governed. This standard applies to permanently installed residential in-ground swimming pools intended for noncommercial use as a swimming pool by not more than three owner families and their guests and exceeding 24 inches in water depth and having a volume over 3,250 gallons. It covers specifications for new construction and rehabilitation of residential in-ground swimming pools and includes design, equipment (including diving boards), operation and installation.

While the pool bottom contours were not visible, our expert was able to accurately measure the contours using special equipment he designed for this occasion.

What he found was the pool bottom contours did not meet the requirements of NSPI-5 for “Minimum Water Envelopes” for pools using a jump board. Basically, the pool was too shallow to safely permit the kinds of dives that occur from a jump board.

Accordingly, the homeowner’s insurance company filed a subrogation claim against the pool contractor. The contractor’s insurance company then paid for the medical costs of the injured diver and for the removal of the diving board.

Continued from page 1

reduce wave energy and buffer storm surge, reducing flood risk and protecting communities. In this vein, insurance solutions for California's protective, life-supporting natural infrastructure—such as wetlands and forests—could reduce climate and disaster risk and present new opportunities.

The latest report of the Intergovernmental Panel on Climate Change (IPCC) highlights the rapid, far-reaching and unprecedented changes needed to limit global warming to 1.5°C. It shows that every extra bit of warming matters, and that warming of 1.5°C or higher increases the risk associated with long-lasting or irreversible changes, such as the loss of some ecosystems. Moreover, the latest report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) finds that around 1 million animal and plant species are now threatened with extinction, many within decades, more than ever before in human history.

The California Department of Insurance and U.N. Environment's PSI Initiative will engage insurers and reinsurers, public policy leaders, environmental NGOs, researchers, and risk management experts on this major collaborative effort to make California's communities and economies resilient, inclusive and sustainable.

About U.N. Environment's Principles for Sustainable Insurance Initiative: Endorsed by the UN Secretary-General, the Principles for Sustainable Insurance serve as a global framework for the insurance industry to address environmental, social and governance risks and opportunities—and a global initiative to strengthen the insurance industry's contribution to building resilient, inclusive and sustainable communities and economies.
www.unepfi.org/psi

About Commissioner Ricardo Lara: Commissioner Lara is one of California's environmental leaders who authored the state's super-pollutant reduction strategy and received the first Climate and Clean Air Award with former Governor Jerry Brown. He wrote the nation's first climate insurance bill to protect California's natural environment. Under his leadership, the Department of Insurance has created the first deputy-level position for climate and sustainability.

Contractor Cashes Jointly-Payable Check Credit to Smith, Smith & Feeley, Newport Beach, CA

A property insurer was not liable where the insured's contractor cashed a jointly-payable check pursuant to a power of attorney granted in a construction contract. (*Jozefowicz v. Allstate Ins. Co.* (2019) 35 Cal.App.5th 829)

Facts

Stanley Jozefowicz owned a mobilehome for which he obtained a homeowners policy through Allstate Insurance Company. In May 2014, the mobilehome was damaged in a fire. Jozefowicz submitted a claim to Allstate, and Jozefowicz hired Sunny Hills Restoration to perform repairs to the mobilehome. The contract between Jozefowicz and Sunny Hills stated that Jozefowicz was appointing Sunny Hills as his representative to endorse and deposit any insurance checks, and directed Allstate to include Sunny Hills on any checks relating to the work. A copy of the contract was sent to Allstate.

In January 2015, Allstate issued a check for \$20,943.97 made payable to both Jozefowicz and Sunny Hills to pay for repairs to Jozefowicz's mobile home. Allstate sent the check directly to Jozefowicz, but he never cashed it. Around the same time, a dispute arose between Jozefowicz and Sunny Hills over the scope and quality of the work. Sometime later, Sunny Hills contacted Allstate and requested that the check be reissued and sent directly to Sunny Hills. In March 2015, Allstate issued a second check in the same amount, made payable to Jozefowicz and Sunny Hills, and sent it directly to Sunny Hills. Sunny Hills endorsed the check and deposited it into its own bank account.

Jozefowicz sued Allstate under California Uniform Commercial Code section 3309, which provides a cause of action for recovery of a lost, stolen or destroyed check. Allstate moved for summary judgment, contending that Jozefowicz was unable to satisfy the elements of a statutory claim under section 3309. The trial court agreed and granted Allstate's motion. Jozefowicz appealed.

Holding

The California Court of Appeal affirmed. California Uniform Commercial Code section 3309 provides that "a person not in possession of an instrument is entitled to enforce the instrument if (1) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (2) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process."

Here, Jozefowicz expressly instructed Allstate to include Sunny Hills on all checks and notified Allstate that Sunny Hills was permitted to deposit all checks. Accordingly, the loss of possession was the result of a transfer and/or a lawful seizure, thus negating the second element of section 3309. Accordingly, Jozefowicz could not recover from Allstate.

Jozefowicz argued that his contract with Sunny Hills failed to comply with certain Probate Code provisions governing powers of attorney, and thus Sunny Hills was not actually his representative when it negotiated the check. The appellate court rejected that argument, because the Probate Code provisions do not apply to a power of attorney coupled with an interest, which is what Sunny Hills had obtained here.

Comment

Note that Jozefowicz did not bring an action to enforce the insurance contract. Rather, he brought an action to enforce the check. However, under the facts of this case, he could not satisfy the requirements necessary to enforce the check. As such, he could not recover against Allstate.

DOI Announcement

RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

NOTICE

TO: All Insurers, Agents and Brokers, Adjusters, Bail Agents & Other Interested Parties

FROM: Licensing Services Division, Producer Licensing Bureau

DATE: July 11, 2019

SUBJECT: Update on CDI's Move to Sircon's Enhanced Online Services and the Launch of CDI's New Check License Application Status Service (CLASS)

On April 23, 2019, we provided notice that the California Department of Insurance (CDI) was moving its online licensing services to Sircon, powered by Vertafore and launching a new Check License Application Status Service (CLASS). We are pleased to inform you that we will make this transition on **Monday, August 19, 2019**. Below is important information related to the roll-out period. Please note that no licensing services will be available from 3:00 p.m. Pacific Time on August 8, 2019 through 5:00 p.m. Pacific Time on August 13, 2019.

The enhanced online services available through Sircon will provide individuals and business entities the ability to submit license applications, license renewals, address changes, business entity endorsements, and terminations electronically. In addition, Sircon's online services will include: improved license status records, improved license renewal notifications, enhanced business entity endorsement and termination services, the ability to submit background statements online, monthly invoices, and online payments using credit cards or e-checks; and, the license reinstatements will replace the late license renewal process.

Roll-Out Period

- All of CDI's online licensing programs will no longer be available to accept online license applications, renewals, address changes, endorsements, or terminations starting 3:00 p.m. Pacific Time on August 8th.
- To allow time for the transfer of data in CDI's current online licensing system to Sircon's enhanced online services no licensing services will be available after 3:00 p.m. Pacific Time on August 8th through 5:00 p.m. Pacific Time on August 13th. CDI will not be able to accept online or paper submissions during this time.
- CDI will be able to accept paper submissions only starting August 14th.
- Insurers, Agents and Brokers, Adjusters, Bail Agents, and other Interested Parties will be able to begin using the Sircon enhanced online services for online submissions to CDI starting August 19th.

Subscriptions Required for Online Submissions via Sircon

- After CDI's transition to Sircon on August 19th, Insurers, Agents and Brokers, Adjusters, Bail Agents, and other Interested Parties who currently use CDI's online licensing services

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DOI Announcement

Notice: Update on CDI's Move to Sircon
To: Insurers, Agents and Brokers, et al.
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will need to subscribe to Sircon in order to be able to use the online services to submit license applications, renewals, address changes, endorsements, or terminations to CDI.

- Current Sircon subscribers will automatically have access to the services for California.
- To create a Sircon account, sign-up at the following:

Individuals – www.sircon.com/individuals

Business Entities – www.sircon.com/agencies

Insurers – www.sircon.com/carriers

NOTE:

- *Individuals and business entities may still submit paper license renewals, endorsements, and terminations to CDI.*

Fee Information

There will be no service fees for the submission of license applications online through Sircon's enhanced online services. Appointment and appointment termination service fees will remain the same. However, there will be fees for the following services:

- \$ 3.50 – Endorsements and endorsement terminations
- \$ 5.00 – Online license renewals
- \$ 6.00 – Letters of certification

Reminder: Launch of CDI's New Check License Application Status Service

As we mentioned in the April 2019 notice, CDI is pleased to re-announce the launch of our new Check License Application Status Service (CLASS). This service will be available beginning August 19, 2019. Whether you submitted your applications to CDI online through Sircon or by paper through the mail, CLASS will enable you to check the status of your applications, to view a list of the documents received by CDI, to view pending required documents, and to access and append applications by attaching pending documents to applications currently being processed. CLASS will provide information to individual applicants on how to submit fingerprints or to complete prelicensing education requirements and to business entities on how to submit required business documents as well as any required business-related items that are still needed. Once a license is approved and issued, CLASS will provide licensees with links to CDI's "Check License Status" and to "Print or Download Your License".

Contact Information

For Sircon account and subscription set-up or service-related questions regarding electronic processing through Sircon, please contact Sircon Support at (517) 381-3860.

For all other questions, please contact us in the Producer Licensing Bureau by email at LicDocuments@insurance.ca.gov or by telephone at (800) 967-9331.

Claims Conference of Northern California, August 27-29, 2019

Come join us in Lake Tahoe, CA for the Claims Conference of Northern California, August 27-29, 2019. CCNC is one of the largest and most diverse educational conferences in our industry. You'll network with top claim professionals from insurance companies, brokerages and agencies along with service providers from all over the western region of the United States.

Choose from a variety of educational courses covering a wide array of claim challenges and opportunities. Earn free adjuster continuing education credits from a number of key states. Visit with over 75 exhibitors/service leaders providing an array of claims products and services. For professional results and improvements, the Claims Conference of Northern California is the place to be, we continue to create a path to claims success.

Our 2018-19 President, Jennifer Pinney, is working along with a planning committee to update our technology, our education, our innovation in getting claims initiatives to the forefront; in an industry that is always moving, changing and growing. We look forward to sharing in this exceptional event with you this year. Make sure to save the dates on your calendar and prepare to be inspired!

Click this link to sign-up online: <http://claimsconference.org/attendee-registration/>

Policyholder's Release of Bad Faith Failure to Settle Claim Held Voidable as a Fraudulent Conveyance Credit to Haight, Brown and Bonesteel, Los Angeles, CA

In *Potter v. Alliance United Ins. Co.* (No. B287614; filed 7/23/19), a California appeals court held that an insolvent policyholder's judgment creditor could void a release of bad faith claims given by the policyholder to his insurer as a fraudulent conveyance under the Uniform Voidable Transactions Act (UVTA). (Civ. Code, §§ 3439 et seq.)

Potter was injured by Alliance United Insurance Company's (AUIC) insured Jesus Tovar in an auto accident. Potter offered to settle for Tovar's \$15,000 policy limit, but AUIC did not respond to the offer. Potter obtained a jury verdict of nearly one million dollars, which was vacated on a motion for a new trial. Before retrial, AUIC entered a confidential settlement with Tovar for \$75,000 to release any bad faith claim for failure to accept the settlement offer. At trial, Potter prevailed again, this time obtaining a judgment in excess of one million dollars. AUIC paid Potter the \$15,000 limit, but refused any further payment. Because Tovar was insolvent, Potter sued AUIC alleging that the release it procured from Tovar was a fraudulent conveyance under statutory and common law. The trial court sustained a demurrer by AUIC and dismissed the case on the ground that the suit failed to state a proper fraudulent conveyance claim.

The appeals court reversed. Potter's lawsuit against AUIC alleged that the settlement agreement and release constituted a fraudulent conveyance under both common law and the Uniform Voidable Transactions Act (UVTA, Civ. Code, §§ 3439 et seq.), on a theory that Tovar was insolvent up to the time of the release, but that Tovar had a viable claim for breach of the implied covenant of good faith and fair dealing against AUIC, which was an "asset" that he could have used to pay down his civil liability. Further, that AUIC participated in a fraudulent transfer of that asset by entering into the release—which prevented Potter from collecting all or a greater share of the judgment in his favor.

The appeals court agreed that this stated a cause of action under the UVTA. The court traced the history of the UVTA going back to Queen Elizabeth I, and defining a fraudulent transfer as "a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim." The Act makes a fraudulent transfer voidable, and the creditor can recover against either "[t]he first transferee of the asset or the person for whose benefit the transfer was made." That does not include, however, "a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee."

The statute allows recovery on proof of either actual or constructive fraud, the latter of which is shown where a debtor makes a transfer or incurs an obligation "[w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation," and the debtor either engaged in a transaction without sufficient assets or would reasonably have believed he would incur debts beyond his ability to pay.

In finding that Potter had stated a claim, the appeals court held that a cause of action for bad faith is an "asset." The court pointed out that a cause of action to recover money damages is a "chase in action," which is considered a form of personal property. Although an exception exists for personal property that is not assignable, the court pointed out that "[a]n insured may, however, assign a cause of action for bad faith failure to settle in exchange for the plaintiff's covenant not to execute an excess judgment against the insured's personal assets. (Citing *Hamilton v. Maryland Cas. Co.* (2002) 27 Cal.4th 718, 732; and *21st Century Ins. Co. v. Superior Court* (2015) 240 Cal.App.4th 322, 327.) Thus, "[b]ecause it was assignable, and because it does not appear to be otherwise exempted, the potential cause of action [for bad faith failure to settle] is property subject to a money judgment and therefore an asset under the UVTA."

The *Potter* court went on to note that although a cause of action for bad faith failure to settle does not accrue until a final excess judgment is entered "*Safeco* and the other cases we have cited recognize a bad faith cause of action may be assigned to the claimant before trial in the underlying action." (Citing *Safeco Ins. Co. of Am. v. Superior Court* (1999) 71 Cal.App.4th 782.)

The *Potter* court also rejected the argument that a release is not a "transfer" stating that: "[T]ransfer' under the UVTA has a broad meaning. [] It includes 'every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.' [] Under the plain language of the UVTA, a release qualifies as a 'transfer.'" The court further stated that a judgment was not required, since the UVTA only requires the creditor to have a "claim."

The court finally found that Potter had alleged sufficient injury, and that AUIC was a proper defendant for a fraudulent conveyance cause of action being a "person for whose benefit the transfer was made" as required under the UVTA. Having found that the claim stated a cause of action under the UVTA, the *Potter* court declined to address common law fraudulent conveyances, deeming the issue to have been waived on appeal.

On the Lighter Side...

Ponderisms...

Why do peanuts float in a regular coke and sink in a diet coke? Go ahead and try it.

I used to eat a lot of natural foods until I learned that most people die of natural causes.

How important does a person have to be before they're considered assassinated instead of just murdered?

Why do you have to "put your two cents in"... but it's only a "penny for your thoughts"? Where's that extra penny going? (taxes)

How is it that we put man on the moon before we figured out it would be a good idea to put wheels on luggage?

Why is it that people say they "slept like a baby" when babies wake up like every two hours?

If a deaf person has to go to court, is it still called a hearing?

Why are you IN a movie, but you're ON TV?

Why do people pay to go up tall buildings and then put money in binoculars to look at things on the ground?

Why do doctors leave the room while you change? They're going to see you naked anyway.

If the professor on Gilligan's Island can make a radio out of a coconut, why can't he fix a hole in a boat?

Why do the Alphabet song and Twinkle, Twinkle Little Star have the same tune?

Why did you just try singing the two songs above?

Did you ever notice that when you blow in a dog's face, he gets mad at you, but when you take him for a car ride, he sticks his head out the window?

HOW DID THE MAN WHO MADE THE FIRST CLOCK, KNOW WHAT TIME IT WAS?