

CAIIA Status Report

SEPTEMBER 2005

Nominating Committee Announces Nominations for 2005

The 2005 Nominating Committee of Immediate Past President Lee Collins, and Past Presidents Sterrett Harper (2001/2002) and Steve Tilghman (2002/2003) are pleased to announce nominations for the new Secretary/Treasurer and Two Year Directors. All Officers and Directors are subject to vote confirmation at the CAIIA Annual Conference in San Jose on October 12-14, 2005. Come and support your new Board and Officers!

Continuing as Officers:

President, Steve Wakefield of Ronald Bolt & Associates, Fresno; Immediate Past President, Douglas B. Jackson, RPA of Southwest Claims Service, Simi Valley; President Elect, Sharon Glenn of John Glenn Adjusters, Walnut Creek; and, Vice President, Peter Schifrin of Schifrin, Gagnon & Dickey, Inc., Van Nuys.

Secretary/Treasurer, 2005/2006

Pete Vaughan, Vaughan & Associates, Benicia/Vallejo

Two Year Directors 2005/2007

Maribeth Danko, Seaciff Claims Group, LLC, Huntington Beach
Sam Hooper, Sam Hooper & Associates, Cerritos/Los Angeles
Frank Zeigon, M&Z Claims Service, Yorba Linda

Continuing as One Year Directors:

Thad Eaton of Eaton & Johnson, Pleasant Hill; Bill Scheler III of Dunlap Claims Service, San Jose; and, Dave Ceresa of AIMS, Sacramento.

If any member wishes to place a name in nomination, they must contact the executive office in writing no later than September 12, 2005. Nominations close 30 days before the Annual Meeting, as per the bylaws. The executive office e-mail is harperclaims@hotmail.com and the fax number is 818 953-9316. The mailing address is P.O. Box 168, Burbank, CA 91503-0168.

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California Association of
Independent Insurance Adjusters



An Employer
Organization of
Independent
Insurance Adjusters

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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@caia.org.

CAIIA Newsletter

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■ California Association of Independent Insurance Adjusters, Inc

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■ PRESIDENT'S MESSAGE

Next month, the CAIIA will hold its 59th Annual Convention at the Hotel Valencia, located in San Jose at the trendy Santana Row. We have a great line up of events for members. Steve Wakefield and Sharon Hansen are in charge of the program and all members who miss it, will join the ranks of those who missed out on last year's convention I hosted with my wife, Elaine. All members should attend or send someone to represent their office in voting on important CAIIA business...including changes to the by-laws. Let your voice be heard in the future of your CAIIA. From the CAIIA Members Only meeting to the Industry Advisory Counsel, this is the most important association function you can attend.

On behalf of the CAIIA, I would like to extend an invitation to insurance company and risk management claims personnel and attorneys serving the claims community to join us at our President's Dinner. It will be held Thursday evening, October 13, 2005, and will be the time where yours truly will turn over the gavel to our incoming President, Mr. Steve Wakefield of Ronald Bolt and Associates. At the same time, the makeup of our Board of Directors will change as we say goodbye to three directors and welcome in three new directors.

This years Education Format will include legal updates by our Of Counsel, Kevin Hansen of McCormick, Barstow, Sheppard, Wayte & Carruth LLP; A Presentation by Bruce Bogart, Director of Training for CPR, on the Strategies for Job Survival in Today's and Tomorrow's Environment; Pete Schifrin will be recertifying attendees on the Fair Claims Settlement Practices (since many have contacted us after not being certified with the



latest changes to the Reg's, as required by statute, we are offering the program in addition to our February classes); and our special guest, Mr. John Postava of SIMSOL, will be training members and guests on the basics of the Simsol estimating software. He's liable to throw in a few tips and tricks for you out there who have already used the program.

The CAIIA offers these training programs for the benefit of CAIIA members and insurance and risk management claims personnel. We know that education of our industry is important to our entire industry. For those of you requiring Continuing Educations (CE) credits, this is a perfect opportunity for you to pick up hours towards that goal. Continuing education takes an effort...it doesn't just happen.

We look forward to seeing you all in San Jose.

DOUG JACKSON, RPA
President - CAIIA 2004-2005

■ Insurance Law Update

Submitted by Joseph Pelochino - Sedgwick of San Francisco

California Supreme Court Affirms Insurers' Right to Reimbursement

Scottsdale Ins. Co. v. MV Transportation, California Supreme Court The California Supreme Court held that an insurer may obtain reimbursement of all defense costs expended under a reservation of rights when it is determined that no claim in the underlying action raised a potential for coverage. In *Scottsdale Ins. Co. v. MV Transportation*, 2005 WL 1712889 (Cal., July 25, 2005), the insured, MV Transportation, was sued by a third party and tendered the defense to its insurer, Scottsdale Insurance Company. Scottsdale advanced the costs of defending MV in the underlying action, but did so under a reservation of its right to recoup costs expended in the defense of claims that raised "no potential for coverage" under the two CGL policies at issue. Scottsdale brought a coverage action seeking a declaration that it owed no duty to defend and was entitled to reimbursement of its defense fees and costs. Unsuccessful in the trial court, Scottsdale pursued the coverage dispute through the appellate process until the state court of appeal ruled there was never any possibility of coverage under the policies. The court, however, denied Scottsdale's request for reimbursement of defense costs already incurred, reasoning that the insurer's duty to defend was extinguished only prospectively.

The California Supreme court accepted review and reversed. In so doing, it affirmed and clarified its decision in *Buss v. Superior Court*, 16 Cal.4th 35 (1997). *Buss* involved the reimbursement of expenses incurred in the defense of a "mixed" action of uncovered and potentially covered claims. The *Buss* court held that an insurer has a right of reimbursement of defense costs expended on those claims that were not ever potentially covered.

MV attempted to avoid application of *Buss* by arguing that it only applied to "mixed" actions, and not to an action such as that presented here, in which no claim was ever potentially covered.

The state high court disagreed. It reasoned that an insurer, facing unsettled law concerning its policies' potential coverage of third party claims, should not be forced to either deny a defense outright, and risk a bad faith suit by the insured, or to provide a defense where it owes none without any recourse against the insured for costs thus expended. The insurer should be free, in an abundance of caution, to afford the insured a defense under a reservation of rights, with the understanding that reimbursement is available if it is later established, as a matter of law, that no duty to defend ever arose.

■ When You Need to Know What Really Happened

Submitted by Garrett Engineers, Inc. - Forensic Division

Case of the Month: Four-Way Stop

This month's case relates to an accident at a four-way stop. The insured stopped at a posed four-way stop. The adverse driver stopped at a posted four-way stop. Each proceeded thru the intersection until the crash occurred. Both drivers claim to have stopped and proceeded forward. Neither car was remarkable for acceleration and both drivers were mature adults.

The local Police Department investigated the accident. GEI was assigned to perform an independent examination of the supplied photos, statements, and databases to determine the actual sequence of events in this matter. Our conclusion was that the insured driver was in the intersection first, and that the police used the incorrect Vehicle Code section in assessing the Primary Collision Factor. The adverse driver "rolled" through the stop sign at a speed of at least 5 mph.

Our expert visited the scene and obtained roadway measurements. Based on his scene investigation and a review of the accident photographs, our expert prepared a diagram of the accident scene. Both vehicles in this incident were equipped with Supplemental Restraint Systems (Air Bags). Both SRS systems deployed. The industry standard is a deployment speed of 12 mph. Then sensors used for deployment are not only speed specific, but they are also vector specific.

For the adverse vehicle, measuring back from the point of impact to the stop sign, and assuming a normal acceleration rate from a full stop, the adverse vehicle should have attained a speed of about 10 mph. This was below the minimum speed to deploy an air bag. Using the proper Pythagorean math and combining the deployment speed and the elapsed time, it was evident that the adverse vehicle "rolled" through the stop sign at about 5 mph. It is, or course, possible that he accelerated at a rate greater than "normal", but he didn't say so in his statement to the police, nor did he say so in his deposition.

The speed estimate was confirmed by viewing the photographs of the adverse vehicle's damage profile. Using a math matrix of the National Highway Traffic Safety Administration (NHTSA) crush to speed data, and the CRASH3 algorithm, the resultant calculation was a speed of about 15mph for the vehicle. When one compares the depth of crush speed, and the acceleration for distance traveled to the point of impact, the calculated speeds compared very favorably.

While at the scene, our expert also timed thirty vehicles, fifteen to match each of the accident directions. He found the average elapsed time for each group of cars validated the "time in the intersection" assumptions that he had used in his calculations.

It was shown that the insured vehicle was in the intersection anywhere from one and a half to three and a half seconds before the adverse driver, therefore earning the right of way, and thus satisfying the requirements of CVC section 21800 (a).

Incidentally, the case went to trial and despite the PhD behind the opposing expert's name, the jury agreed with our expert's analysis.

Three United States Marines Charged with Auto Insurance Fraud in San Bernardino County Case

SAN BERNARDINO _ The California Department of Insurance Fraud division announced Wednesday that three United States Marines based out of 29 Palms have entered pleas of not guilty to felony charges of insurance fraud and a misdemeanor count of filing a false police report. James Joseph Quiroga, 22, was charged with two counts of automobile insurance fraud and filing a false police report. Nicholas Vega, Jr. and Shawn Paul Burrel, both 21, were both charged with one count of automobile insurance fraud and one count of filing a false police report. All three defendants voluntarily surrendered themselves to the Joshua Tree District Superior Court.

The California Department of Insurance Fraud Division's Inland Empire Urban Auto Fraud Task Force conducted the investigation and the San Bernardino County district Attorney's Auto Fraud Unit is prosecuting the case.

"All of us in society must abide by the laws that protect us from fraud, or else face the consequences," said Insurance Commissioner John Garamendi. "These arrests send a strong message that this department's fight against crime extends to anyone who would break the law, regardless of their position."

According to the investigators, the charges are based upon incidents that happened in October and November of 2004. First, an automobile insurance claim was submitted to Progressive Insurance for an auto collision that occurred before the policy was acquired. Additionally, subsequent attempts were made claiming that the vehicle had been stolen and vandalized, when in fact the defendants had allegedly concealed and damaged the car themselves. Although no money was paid by progressive, its exposure to losses could have been approximately \$20,000.

■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Coverage - Homeowners Policy - Residents

Safeco Insurance Company of America v. Jamey Lynn Parks, Court of Appeal, Second District (August 26, 2004)

The residence of children who come from split families is often hard to determine when trying to decide if there is coverage under either a homeowners policy or an automobile policy. This case exemplifies those problems.

Michelle Miller, age 17, went on a date with Jamey Parks, age 21. They drove from Santa Maria to Santa Barbara. On the way back, Miller drove because Parks was intoxicated. The car had a flat tire. Parks became angry. They called a friend, Teresa Cooney, who came out to pick them up in her vehicle with a friend, Isaiah Rivera. Rivera drove the vehicle. When Parks again became angry, Rivera, Cooney and Miller had him exit the vehicle on the freeway shoulder and they drove back to Santa Maria without him. Parks, while walking on the freeway, was struck by a passing motorist and sustained severe injuries. He sued Miller, Cooney and Rivera for negligence. Cooney's auto insurer provided a defense to all three and settled Parks' claim against Cooney and Rivera for its policy limits. The parties then stipulated to binding arbitration of Parks' claim against Miller, which resulted in an award of \$2,197,886. Miller assigned rights against Safeco Insurance Company of America (Safeco) to Parks.

Safeco insured Eddie Barnette under a homeowners policy covering his home. The policy covered insureds, who were defined as the named insured and residents of his household including relatives, and any person under the age of 21 who was in his care. The policy excluded injuries arising out of the use of an automobile.

Miller's parents were divorced. Her father had legal custody of her. Miller spent some time with her mother, who resided with Eddie Barnette. Safeco conducted an investigation, which determined Miller lived primarily with her father. Miller stated she lived with her father. Safeco interviewed Eddie Barnette and Miller's mother, which further solidified the fact that Miller lived with her father. Miller stayed occasionally with her mother on weekends and on other special occasions. Based upon this information, Safeco declined to defend Miller. Parks sued Safeco for breach of contract and for bad faith. The trial court found Safeco had a duty to defend Miller and indemnify her for the entire judgment. This matter was appealed.

The Court of Appeal reversed. The trial court found the automobile exclusion did not apply because the breach of duty did not arise out of the use of an automobile, but rather abandoning Parks on the roadway. The Court of Appeal did not comment on this issue. However, on the issue of residence, the Court noted that the trial testimony differed from the information given to Safeco prior to the time it declined the defense. At trial, Michelle Miller and her mother indicated that Eddie Barnette had pressured them to give Safeco the information they gave. They indicated Miller spent substantial time at the Barnette residence. Based upon that information, the trial court concluded Miller was an insured under the Safeco policy.

The Court focused on when the duty to defend is determined. The Court stated this duty is determined at the inception of the third party lawsuit. In deciding whether Safeco owed a duty to defend Miller, the Court noted that a child may have more than one residence at the same time. Residence is a place of some permanency, rather than a place of temporary stay. To qualify as a resident under the Safeco policy, Miller had to be a member of Barnette's household and under his care. A household was stated to be a collection of persons living together under one head. Under the facts known to Safeco before it declined the defense, Miller did not meet the policy definition of an insured. There was no evidence that she was a member of Eddie Barnette's household or under his care. Thus, Safeco had no duty to defend her and did not act in bad faith in refusing to do so. As long as Safeco made an informed decision based upon the information known to it at the time of tender, there was no liability. Safeco did not act unreasonably when it relied upon the sworn testimony of its insured and other persons who had personal knowledge of the facts. The fact that some of the evidence was later renounced, did not make the original refusal to defend unreasonable. The judgment was therefore reversed.

COMMENT

The decision as to whether to defend a person who may be a resident of an insured's household is a treacherous one fraught with peril due to the fact that it turns on the facts. The lesson from this case is that a tender may safely be denied only where there is a thorough investigation of the facts prior to the time the tender is denied.

■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Continued from page 4

Wrongful Death Action - Medi-Cal Liens

Fitch v. Select Products, California Supreme Court (August 1, 2005) In this California Supreme Court case, the Court considered whether Medi-Cal can assert a lien for costs incurred in treating a decedent during his final illness in a wrongful death action which did not include claims for medical expenses.

Elan Jay Fitch contracted cancer while working for Southland Corporation as a diesel mechanic. Medi-Cal paid the medical expenses to treat his cancer. Fitch filed a worker's compensation claim and Medi-Cal filed a claim of lien in that proceeding to recover the amount paid for medical treatment. While that action was pending, Fitch died of cancer, survived by his wife and children.

Fitch's widow brought an action for damages resulting from Fitch's illness and death. She named Select Products Company as a defendant, alleging that the death was caused by a coating product manufactured by Select that Fitch had used in his work. The action was brought solely as a wrongful death action and not on behalf of Fitch's estate to recover expenses incurred in treating Fitch.

The worker's compensation action settled and a part of the medical expenses claimed by Medi-Cal were paid. Medi-Cal then filed in the wrongful death action a lien for the remainder of the sums it had paid for medical care.

At trial, the Court ruled that Select could not be held liable in the wrongful death action for the decedent's medical expenses because those expenses could only be recovered in an action by the Estate. The wrongful death action resulted in a judgment in favor of the widow and children.

The trial court denied Medi-Cal a lien on the recovery. Medi-Cal appealed. The Court of Appeal reversed holding that Medi-Cal could assert a lien.

On petition to the California Supreme Court, it reversed in a unanimous decision. In doing so, the Court interpreted the statutes which authorize Medi-Cal to seek recovery from those responsible for treatment it has paid. The Court noted that a right of recovery from

third parties who have caused an injury is given to Medi-Cal for medical treatment for which it has paid. Medi-Cal may also assert a lien against recovery from a third party in an action brought by persons entitled to bring such actions.

The Court stated that a wrongful death action is a new action in favor of the heirs as defined by statute based upon their own pecuniary injury suffered by the loss of a relative. This right is distinct from any action that might have been maintained by the deceased had he survived. Because damages awarded in a wrongful death action are for harm done to the survivors, and not the deceased, medical expenses for treating the final illness or injury are not recoverable. Since the damages awarded in a wrongful death action are compensation for the harm to the survivors rather than to the decedent, and because those damages do not include medical expenses incurred in treating the decedent, Medi-Cal is not allowed to recover in a wrongful death lawsuit any sum of money it paid for medical expenses. Medi-Cal may bring its own action to recover the value of benefits provided to a beneficiary but it may not use the lien procedure in a wrongful death action to obtain recovery of those sums from the survivors. Because none of the survivors' wrongful death damages were attributable to the cost of the medical care provided, the lien was not authorized in this case.

The Court therefore held that a Medi-Cal lien may not be asserted in a wrongful death action where the damage recoverable does not and could not include compensation for medical services provided to the decedent by Medi-Cal. The judgment of the Court of Appeal was therefore reversed.

COMMENT

This decision flowed from the statutory construction given the Medi-Cal statutes by the Supreme Court. In the Court's view, the statute was clear that, while Medi-Cal could assert its own right of recovery, it could not impose a lien on a recovery in a wrongful death case which did not include the medical expenses it paid.

■ CAIIA Calendar

■ Claims Conference of Northern California
September 13 & 14, 2005
Oakland Marriott
Oakland, CA

■ CAIIA Annual Convention
October 12-14, 2005
Hotel Valencia, Santana Row
San Jose, CA
Contact Steve Wakefield
559-485-4441
boltadj@msn.com



CAIIA REGISTRATION FORM
California Association of Independent Insurance Adjusters
ANNUAL CONVENTION – October 12, 13, & 14, 2005
at the beautiful



HOTEL VALENCIA

On Santana Row

355 Santana Row, San Jose, CA 95128

For Reservations, Call: 866.842.0100 or (408) 551-0010

Mention CAIIA for special rates shown below

Standard Room Rate \$149 (single/double) plus state/local taxes

Attendees must make their own hotel reservations. Hotel Cut-off Date is September 23, 2005

Your Name _____ Significant Other _____
 Company _____
 Address _____
 Phone _____ Fax _____
 E-Mail _____

- **CAIIA members must purchase a minimum of one complete registration package in order to attend any event.**
Package includes all events below.
- **CAIIA Member Employees may attend full or separate events only with a minimum of one full Registration Package.**
- **Insurance personnel and guests (*) may purchase President's Gala Dinner Event and Educational Events only.**
- **Please specify which events you and your significant other/mate will actually attend by placing a check mark in the box next to the event. If an insurance personnel guest (*), please indicate # attending each event in Guest Box [] below.**

EVENT	COST	# of TICKETS	TOTAL
Registration Package – members with spouse/mate **	\$ 200.00	_____	\$ _____
Registration Package – members w/o spouse **	\$ 175.00	_____	\$ _____
President's Dinner/Reception/Awards/Installations (10/13/05)	\$ 50.00	_____	\$ _____
Educational programs including continental lunch (available to member employees or insurance company guests only)	\$ 25.00	_____	\$ _____
Fair Claims Settlement Practices Recertification (with any of above)		_____	FREE

⌚ Items in blue for Members/Member Employees/Significant others only ⌚

SCHEDULED EVENTS

*Please Show # Attending Events Below: You Mate Guest**

10/12	6:30 P.M.	Registration & Reception	[]	[]	[]
10/13	9:00 A.M.	Business Meeting	[]	[]	[]
10/13	12:00 P.M.	Lunch	[]	[]	[]
10/13	1:30 P.M.	Advisory Counsel	[]	[]	[]
10/13	6:30 P.M.	Presidents Gala Dinner Event, Awards, & Officer Installations	[]	[]	[]
10/14	8:00 A.M.	Registration/Continental Breakfast	[]	[]	[]
10/14	9:00 A.M.	Education Seminars	[]	[]	[]
10/14	12:00 P.M.	Luncheon	[]	[]	[]
10/14	1:00 P.M.	Simsol Estimating Program Training	[]	[]	[]
10/14	4:00 P.M.	Closing Ceremonies			

Any Questions, please call or email

Sharon Glenn @ sglenn@johnglennadjusters.com

Sharon Glenn, John Glenn Adjusters & Admin., Inc. -- (925) 280-9320

Steve Wakefield, Ronald Bolt & Associates – (559) 485-0441

Grand Total Payable \$

Please make your checks payable to CAIIA
or pay by credit card.

Mail Registration form

and payment to:

Steve Wakefield
Ronald Bolt & Associates, Inc.
414 North Broadway
Fresno, CA 93701-1512

Credit Card: AMEX ____ VISA ____ M/C ____

Cardholder Name _____

Card # _____

Expiration Date: _____

Signature: _____

* 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.

Cut-off date for Convention (not hotel) is October 5, 2005. Any registration after that date is subject to a \$35.00 late fee.

2005 CCNC PROGRAM OF EVENTS

Tuesday, September 13th

9:00 am - 10:00 am

Welcome by Keynote Speaker: **Edward Hochuli, Esq.**
Defense attorney and NFL Referee will tackle:
*The tremendous difference between handling
the big claims and the small ones*

10:20 am - 11:40 am

Workshop Sessions:

I. **Slip, Trip and Fall**

Michael von Haenel • Mark Bates, Esq. • John Thurber, Esq.

II. **Catastrophe Claims**

John Wrigley • Kenneth Shuman • Susan Waller

General Session: **Mock Trial Part I**

*A liability oriented trial involving a fictional DUI case
Raymond Deutsch, MD • Michael von Haenel • Michael King, Esq.
David Sanders, Esq. • Richard Valerian, Esq.*

3:10 pm - 4:40 pm

General Session: **Mock Trial Part II**

Wednesday, September 14th

9:00 am - 10:00 am

Workshop Sessions:

I. **Ethics a Guide for Insurance Professionals**

Ulises Castellon, CPCU • Greg Harwell, CPCU • Sandra Masters, CPCU

II. **Subrogation**

William Webster, Esq. • Kim Gunther

III. **Roofing: the Good, the Bad and the Ugly**

Tony Milo

Workshop Sessions:

I. **Combatting Insurance Fraud**

*John Standish • Craig Pusser
Eric Von Giedern, Esq. • Tom Fraysse, Esq.*

II. **Cyber Risks and the Theft of Intellectual Property**

Michael Diliberto • Michael Lamprecht • Robert Underwood

Workshop Sessions:

I. **Marine Claims**

Kent Clancy, Esq. • Samuel Ruby, Esq. • Rebecca Galloway

II. **Construction Defect - Anatomy of CD Lawsuit**

Patricia Davis • Charles Harris, Esq. • Eileen Ridley, Esq.

2005 CCNC REGISTRATION FORM

Navigating the Course of Change

Attendee Name:	_____
Company:	_____
Address:	_____
City/St/Zip:	_____
Phone:	_____
Fax:	_____
Email:	_____
Business Type:	_____

Carrier Personnel & Self Insureds - \$35 one day ~ \$65 two days
 IAs, TPAs, Agents/Brokers - \$45 one day ~ \$75 two days
 Attorneys - \$125 one day ~ \$175 two days
 All other Attendees - \$250 both days
If one day, please indicate: Tues. or Wed.

Make check payable to: CCNC,
and mail with completed registration form(s) to:
CCNC Registration
9845 Horn Road, Suite 270
Sacramento, CA 95827

Additional registration questions please contact
Corby Schmaultz at cschmaultz@jbaia.com

We are pleased to announce that credit card registration
is now available through PayPal



For credit card registration, go to <http://www.claimsconference.org>

EXECUTIVE OFFICE DUTY DISTRIBUTION AND COMMITTEES

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By-Laws	Doug Jackson	805-584-3494	scsdj@southwestclaims.com
	Sharon Glenn	925-280-9320	sglenn@johnglennadjusters.com
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Internal Management	Robert Lobato	909-964-8330	rlobato.pioneer@verizon.com
Re-Certification Seminar	Pete Schifrin	818-909-9090	pschifrin@sgdinc.com

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President's Office: (805) 584-3494
Insurance Adjusters, Inc. Newsletter
California Association of Independent