

CAIIA *Status Report*

SEPTEMBER 2009

MAKE SURE THE DOI HAS YOUR EMAIL !!!

Here is our latest report from Helene DalCin of DalCin Consulting Service, Burbank, CA. All IA's owe a great debt of gratitude for all of the work Helene has done for all of us. Below is another example of the work Helene is doing.

On July 23, 2009 I attended my first meeting as an appointee of the Commissioner Poizner's Curriculum Board in Sacramento; this is a 3 year term which will end July 10, 2012. The board has 4 meetings a year, 3 of which are held in Sacramento, and the other is done telephonically in a conference call. The July 23rd meeting had an unusually long agenda, and I'll try to briefly cover those issues that have particular relevance to independent adjusters.

All independent adjusters should have received from the DOI by mail or e-mail a Notice dated May 4, 2009. The substance of that communication was to advise Admitted Insurers, Producers, Independent Adjusters, and Public Adjusters of 2 significant changes that went into effect on July 1, 2009: First, the DOI will be decreasing all fees for licensees by 6%. As an example, the old fee for IA license renewal was \$241, it is now \$227.

Secondly, effective July 1, 2009, the DOI will no longer print and mail hard copies of its licenses. Instead, individuals and business entities will receive an e-mail with instructions and a website link to download their license from the DOI website.

It is critical that all individuals and entities provide the DOI with a current and valid e-mail address so that you'll be able to receive e-mail notifications that your license has been issued and may be downloaded. You should confirm that all of your contact information is accurate by going to: <https://interactive.web.insurance.ca.gov/flrs/addressChange/Welcome.jsp> Since the DOI did not have my e-mail address listed, I did not receive the May 4, 2009, Notice.

As of July 1, 2009, the DOI website has been updated to include the selection "Obtain Your License Online." This is where you will be able to download and print your license. There are step by step directions provided to guide users through the process.

The DOI has also updated their "Check License Status" website. Based on the demonstration presented at the July 23, 2009, board meeting, you should find the website to be more user friendly than in the past.

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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@caiiia.org.

CAIIA Newsletter

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PRESIDENT'S MESSAGE

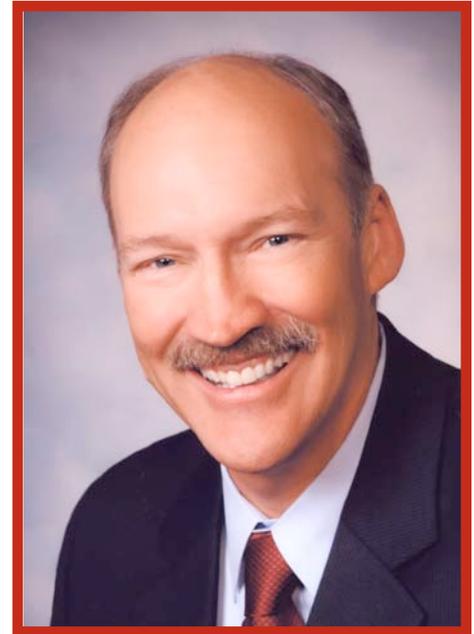
Doing It "The Right Way"

Adjusting is an art form. Just as in painting, sculpture, or photography, adjusting involves applying a unique perspective to situations, and then processing the information to create a final product which conveys that perspective to others. There is a lot of background information that we may require in order to be effective on any given claim. Some of it can be taught in workshops, seminars, and classrooms. Much of it must come from common knowledge, because claims can come from any field, and involve any technology, profession, cultural group, class, or personality types. But the basic approach we take with any given insured and circumstance is something we determine on the spot, and is the result of everything that we are. It can not be standardized, or taught by rote. Any given claim can be handled in many ways. There is no single correct approach. Finding a path to resolution is definitely an art.

As with fine art, there are various schools or methods. In the art world there is the romantic school, abstract, realistic, etc. Within the claims culture there is the salesman's approach, the technician's approach, or the powerbroker's approach, to name just a few.

A flower can be depicted a hundred ways by a hundred different people. Was Picasso's way the correct way? No one can say. His way was certainly a very good way, a successful way. But other techniques also have merit. It is just so with claims.

Some adjusters are all smiles, winning people over with good looks



and pleasant disposition. Other adjusters show how effective they are by getting involved in great detail, or showing technical competence. There are adjusters that just work hard, and make it work just by grinding every day. There are a lot of ways to do the job.

As a leader, whether you run an office, a region, a claims department, an insurance company, or an independent firm, your organization will be more successful if you encourage an individualized approach. Too many of us know what works for us, and try to project our model of success onto others. While other people may not have our same skill set, they are likely to have some other skill that gets them there via a different path. You may be blind to the possibilities of getting it done that way, simply because you can't do it that way. Me, I broke my nose in football, so I have trouble getting by on my good looks. The next guy may not know much about construction,

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Make Sure the DOI Has Your E-mail!!

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The DOI is updating and refining requirements for CIC 1749 "Prelicensing and Continuing Education," and it is the goal to submit the proposed changes to the legislature by July 31, 2010. I was surprised to learn that many proposed changes, is a requirement that all Adjusters complete 3 hours of Ethics Training. In the recent past, I had been given to understand that in order to keep California's curriculum consistent with the rest of the nation, the Ethics requirement was currently a 3 hour requirement that must be fulfilled before relicensing in May 2010. I have now confirmed that the 3 hour requirement will not be effective until July 31, 2010, if it is approved by legislature and signed by the governor.

Out of an abundance of caution, and in order to confirm the current requirement for an Ethics Course, I placed a call to Ms. Ferguson, Chief, Producer Licensing Bureau for the DOI, and she confirmed that as long as we receive course approval from the DOI for our proposed Ethics course, a one hour course on Ethics will fulfill the requirement. In response to this updated information, I am now working with our speakers to include only a one hour Ethics course and a 3 hour course on other topics for the CAIIA convention in October. I will submit 2 separate applications to the DOI for approval once I receive our speaker's paperwork.

I also received a definitive response to recent inquiries regarding the need for a qualified manager with an agency license to complete continuing education hours. Per Ms. Ferguson, if a person does not have an individual independent adjuster license, there is no CE requirement. Yes, that is a very large loophole.

PRESIDENT'S MESSAGE

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but he has developed a network of excellent contractors or technicians. Who knew that would work?

Are you a boss that likes to start early, so you make everyone get to the office by 8:00 AM? Some people don't work well in the early morning. Others may have conflicting obligations. But the same late day worker might add value with a natural telephone manner that defuses half of the angry calls before they ever reach you. It's your job to find and encourage each person in his or her unique approach to getting the work done. Notice what they are good at, and send them in that direction. Be open to new or different approaches. Maybe you'll end up finding a Monet instead of a Picasso.

If you are confident that your way is the best way, other people will never measure up to your "high standards". We often hear old timers remark that there just are not any good adjusters anymore. People keep disappointing them.

By way of illustrating my point, notice how each president of our association also brings a different set of skills and values to the job. Each president has done the job that they can do. Steve Tilghman ran great seminars with good subjects. Doug Jackson picked out excellent

venues resulting in memorable meetings. Peter Schiffrin brought a sense of humor, and is still a steady leadership presence in our board's email communication. Sam Hooper has had a larger vision of what our organization can be, and is putting on what is looking like the largest meeting our organization has had in many years, continuing his push for growth that he started as membership chair. It looks like my strength may have been in delegating, because this year we have had one of the most active groups that I can ever remember. All of these approaches were effective. Each is a reflection of specific individuals, their interests, strengths, and personalities. All have merit.

It takes someone who understands the art of leadership to develop all the talent that lies within a company or an association. It's important to remember that we must work with the skills that our people have, and help them to evolve, starting with who they are, not with who we are. By doing so, we advance both the skills of the individuals we work with, and on a larger scale the art of claims handling.

PETE VAUGHAN

President - CAIIA 2008-2009

You May Have State Nonresident Withholding Responsibilities

The Executive Office received a voicemail message from the Franchise Tax Board (FTB) of the State of California recently. Your editor was extremely happy to hear that it was a request that the following article be published in our newsletter, and not an audit of his taxes. Since your editor wants to avoid any conflict with the FTB or an audit from them, we publish this article for your consideration. Ed.

If you pay nonresident independent contractors to perform services in this state, the California Franchise Tax Board (FTB) wants to make you aware that unless certain exceptions apply, you must withhold and send to FTB seven percent of all payments that exceed \$1,500 in a calendar year. (California Revenue and Taxation Code Section 18662)

Who is a nonresident independent contractor?

An independent contractor is one who is contracted to perform specific tasks and is not your employee. For your purposes, nonresident independent contractors who receive California source income may include, but are not limited to consultants, trainers, infrastructure contractors, and other non-wage payments made to nonresidents who provide services to insurance companies in California.

Is nonresident independent contractor withholding a new tax?

No. Nonresident withholding is a prepayment of tax similar to Employment Development Department's payroll tax withholding on California residents' wages. While laws governing nonresident withholding are not new (see Stats. 1951 ch. 257), FTB aims to better educate withholding agents, in this case, insurance associations and their affiliates on the forms and procedures required.

Need withholding procedures, information, or forms from FTB?

- Visit their website at ftb.ca.gov and search for nonresident withholding.
- Review FTB Publication 1017, Resident and Nonresident Withholding Guidelines.
- Call them at 888.792.4900 or 916.845.6262 (not toll-free).
- Email them at wscs.gen@ftb.ca.gov. Type Nonresident Withholding in the subject line. This is not a secure email address. Please do not send confidential information.

Volunteers Needed for the CCNC

The CAIIA is exhibiting at the Claims Conference of Northern California (CCNC) on September 10 and 11, 2009. We need volunteers to help at the booth. Please contact Sterrett Harper at harperclaims@hotmail.com or 818 953-9200 to sign up. The CCNC does have continuing education credits for IA's. These have been approved by the California Department of Insurance for IA's.

Nominations

The Nominations Committee, consisting of immediate past president Peter Schiffrin and past presidents Sterrett Harper and Doug Jackson, is please to announce to following nominations:

President: Sam Hooper, Sam Hooper and Associates, Cerritos

Incoming President: Phil Barrett, Barrett Claims Service, Ukiah

Vice President: Jeff Caulkins, John S. Rickerby Company, Glendale

Secretary-Treasurer: William McKenzie, Walsh Adjusting Company, San Diego

Immediate Past President: Peter Schiffrin, SGD, Inc., Northridge

Two year Directors: Tonya Gonder, Casualty Claims Consultants, Oakland; Scott Hannaford, Hannaford Claims Service, Fresno; and Art Stromer, SoCal Adjusters, LLC, Chino Hills

The membership is advised that any member may nominate anyone to any office. All nominations must be in the executive office 30 days or more before the Annual Convention. The Annual Convention is on October 30, 2009.

Coverage Alert

Submitted by McCormick Barstow, LLP - Fresno, CA

Supreme Court reverses Court of Appeal: assault and battery motivated by an insured's unreasonable belief regarding need for self-defense does not result in injuries from an "accidental" act under homeowner's liability policy

Insurance Coverage and Bad Faith

Delgado v. Interinsurance Exchange of the Automobile Club of So. Cal., ___ Cal.4th ___ (2009).

In *Delgado*, the California Supreme Court reversed the Second District Court of Appeal and held that under a homeowner's "occurrence"-based policy defining "occurrence" in relevant part as an "accident," the insurer had no duty to defend an insured alleged to have inflicted bodily injury relating to excessive self-defense because such injuries, as a matter of law, did not arise from an "accidental" act.

BACKGROUND FACTSThe progress of this case was originally reported in our June 21, 2007, June 30, 2007, and October 21, 2007 *Coverage Alerts*. In this case, Reid (the insured) had kicked Delgado and struck him on the nose while the two were standing on the sidewalk across the street from Reid's residence. Delgado sustained physical injuries and filed suit against Reid, alleging intentional battery and negligence. Reid's insurer denied coverage on grounds that there was no "occurrence" and that the conduct arose out of Reid's intentional acts. Reid and Delgado reached a settlement and stipulated that Reid's use of force was negligent. Reid assigned all his claims against his insurer to Delgado who subsequently filed suit against the insurer. The trial court ruled in favor of the insurer and Delgado appealed.

PRIOR RULINGS BY THE COURT OF APPEALThe Court of Appeal reversed, determining that there was a question of fact as to whether Reid had acted intentionally. The court went on to determine with respect to the cause of action for bad faith that in the situation where there is a factual dispute relating to coverage, the potential for coverage establishes a duty to defend and an insurer faced with such a dispute would have no reasonable basis for denying a defense. Thus, the court determined that in refusing to offer a defense to Reid, the insurer had acted unreasonably and without proper cause as a matter of law.

In a subsequent opinion, the Court of Appeal tempered and modified its prior holding (that the refusal to offer a defense in such a situation would be without proper cause as a matter of law), stating, instead, that the factual dispute established the duty to defend and that Delgado's allegations were therefore sufficient to state a cause of action for the bad faith refusal to defend.

On September 25, 2007, the California Supreme Court granted review of the decision.

THE CALIFORNIA SUPREME COURT'S RULINGIn reversing the Court of Appeal, the Supreme Court noted that the term "occurrence," defined in relevant part as an "accident," had been judicially construed in the context of liability policies to mean "an unexpected, unforeseen, or undesigned happening or consequence from either a known or an unknown cause." As a result, this common-law definition of "accident" would be applied to subsequent, similarly worded "occurrence" definitions so that the term "occurrence" is not ambiguous. Additionally, the Supreme Court indicated that the "accident" requirement in "occurrence"-based liability policies "refers to the conduct of the insured for which liability is sought to be imposed on the insured" and does not refer to whether or not the injured party found the injury "unexpected, unforeseen, or undesigned[.]" Also, the Supreme Court held that an unreasonable, subjective belief in the need for self-defense does not trans-

form an otherwise intentional, purposeful act into an "accident" because actions are not "accidental" when "all of the acts, the manner in which they were done, and the objective accomplished occurred as intended by the actor." Therefore, because the insured's alleged assault and battery "were...done with the intent to cause injury" and there were no allegations that the actions were "merely shielding" or were performed as "a reflex action," the resulting alleged injuries were not "accidental," no potential for coverage was created and, as a result, the insurer's duty to defend was not triggered. Moreover, the Supreme Court noted that in a number of past insurance cases the courts of appeal have "rejected the notion that an insured's mistake of fact or law transforms a knowingly and purposefully inflicted harm into an accidental injury."

The Supreme Court then considered and rejected two additional arguments raised on appeal. First, the Court disagreed that language from *Gray v. Zurich Insurance Co.*, 65 Cal.2d 263 (1966) supports the conclusion that unreasonable use of force and/or self-defense could result in "accidental" injuries. Rather, the *Delgado* court emphasized that the *Gray* decision dealt with whether unreasonable use of force and/or self-defense would result in "willful" injuries precluded from coverage by operation of Insurance Code §533 or older intentional act exclusions which were identical in scope to §533. Additionally, the language in *Gray* indicated the focus in that case was on the reason or motivation for an act which, according to the *Delgado* court, was not relevant to the "accident" analysis.

The Court also disagreed that mistaken or unreasonable self-defense could result in "accidental" injury because the insured could be responding to "unforeseen and unexpected" provocative acts by the injured party. Rather, the *Delgado* court emphasized that the insured's own actions "must be considered the starting point of the causal series of events, not the injured party's acts that purportedly provoked the insured into committing assault and battery" because "[t]he term 'accident' in the policy's coverage clause refers to the injury-producing acts of the insured, not those of the injured party."

THE EFFECT OF THE COURT'S RULINGThe Supreme Court's ruling in *Delgado* clarifies California law regarding several aspects of "occurrence"-based liability policies which define an "occurrence" as an "accident." First, the decision holds that the common-law definition of "accident" as "an unexpected, unforeseen, or undesigned happening or consequence from either a known or an unknown cause" is read into such liability coverages by operation of law and thereby eliminates or restricts the argument that the "accident" requirement is "ambiguous" and subject to construction against the insurer. Next, the *Delgado* opinion supports the reasoning of multiple California Court of Appeal decisions which have held that "occurrence"-based liability coverage for "accidents" focuses on the nature of the insured's injury-producing conduct, and not on the insured's motivation, expectation of harm or whether the insured inflicted injury under a mistake of law or fact. Finally, the *Delgado* decision supports the view that an insurer's duty to defend under "occurrence"-based liability coverage for "accidents" is not triggered if the insured is alleged to have inflicted intentional injury and there are no allegations or other information indicating that some other "unexpected, unforeseen, or undesigned" event combined with the insured's intentional acts to cause injury.



CAIIA REGISTRATION FORM

California Association of Independent Insurance Adjusters
ANNUAL CONVENTION –October 30, 2009
RANCHO LAS PALMAS RESORT & SPA
41-000 Bob Hope Drive
Rancho Mirage, California 92270
Tel: 760-568-2727



Mention California Association of Independent Insurance Adjusters (CAIIA) for special room rates
Attendees must make their own hotel reservations !

For the CAIIA Golf Tournament on 10/29/09 - Contact Jeff Stone at (951) 371-8845
Golf Registration Forms are available at www.caiia.com

Your Name _____ Significant Other _____
 Company _____
 Address _____
 Phone _____ Fax _____
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EVENT	COST	#TICKETS	Total Price
Member Convention Package <i>(Includes Breakfast, CE Class/Guest Speaker & Luncheon, and Dinner/Reception)</i>	\$ 170.00	_____	\$ _____
Spouse/Guest Fee (***)	\$ 90.00	_____	\$ _____
Non-Member (***) Convention Package	\$ 180.00	_____	\$ _____
4 Hour CE Class (Includes Breakfast/Speaker/Lunch)	\$ 100.00	_____	\$ _____
President's Galas Dinner/Reception	\$ 85.00	_____	\$ _____
	Grand Total Payable		\$ _____

SCHEDULED EVENTS

Please specify which events you and/or your significant other/mate will actually attend 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
10/29 – 6:00 P.M. Registration/Hosted Reception	[]	[]
10/30 – 7:00 A.M. Registration/Breakfast	[]	[]
10/30 – 8:00 A.M. Seminar	[]	[]
10/30 – 12:00 P.M. Luncheon	[]	[]
10/30 – 2:00 P.M. Business Meeting (*)	[]	[]
10/30 - 10:00 AM Spouse/Guest lunch (***)	[]	[]
10/30 – 7:00 P.M. Reception	[]	[]
10/30 – 8:00 P.M. Installation Dinner	[]	[]

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BUS 562-802-7822
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(*) Members Only !

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(**) 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 includes alternative activity, lunch and dinner on Friday (does not include CE Classes or Guest Speaker)

Early Registration is Encouraged. Cut-off date is October 2, 2009.



Register Now To Attend

the 16th Annual

Claims Conference of Northern California

Thursday & Friday

September 10-11, 2009

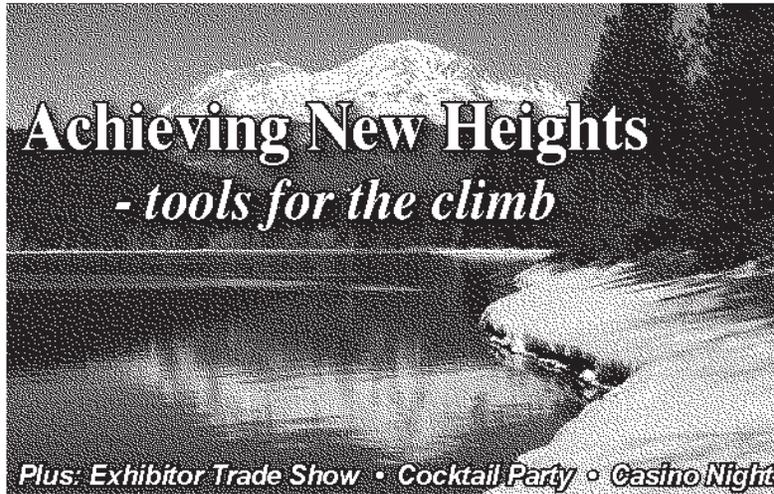
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Keynote Address by
Nancy Feagin



*The Power of Commitment:
Rising Above Overwhelming
Adversity on the Ascent of
Mt. Everest*

**"Early-Bird" Registration Open Now
thru July 31, 2009**

Attendance Rates Go Up August 1st

Carrier Personnel,
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\$125 for both days
\$75 for one day only

All other Attendees:
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If Registering for
One Day Only,
please indicate which day:

- Thursday or
 Friday

Amount Enclosed:
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Business Type: _____

Make check payable to: CCNC, and mail with completed registration form(s) to:

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Rocklin, CA 95677-0173**

Questions? Please contact Michael Hall at
michaelhall@matteicos.com or at 916.418.3330.

The Hyatt Regency has put in our room registration code as "CCNC" and they are open to booking guest rooms NOW!

Rates start at \$179/night. CCNC encourages all involved to secure your room(s) early.

Call The Hyatt Regency for Reservation: 888-421-1442, remember to use the group code "CCNC".

Reservations may also be made online, using the code link at:
www.ClaimsConference.org/2009/pages/hotel.html.

Please fill out one form per person - photocopies are accepted. Register on line by credit card at:

www.ClaimsConference.org

Airline Announcements?

United Flight Attendant announced, 'People, people, we're not picking out furniture here, find a seat and get in it!

"As you exit the plane, make sure to gather all of your belongings. Anything left behind will be distributed evenly among the flight attendants. Please do not leave children or spouses . . . except for that gentleman over there.'

Heard on Southwest Airlines just after a very hard landing in Salt Lake City. The flight attendant came on the intercom and said, 'That was quite a bump, and I know what y'all are thinking. I'm here to tell you it wasn't the airline's fault, it wasn't the pilots fault, it wasn't the flight attendant's fault, it was the asphalt.

After a real crusher of a landing in Phoenix, the attendant came on with, 'Ladies and Gentlemen, please remain in your seats until Capt. Crash and the Crew have brought the aircraft to a screeching halt against the gate. And, once the tire smoke has cleared and the warning bells are silenced, we'll open the door and you can pick your way through the wreckage to the terminal.'

Part of a flight attendant's arrival announcement: 'We'd like to thank you folks for flying with us today And, the next time you get the insane urge to go blasting through the skies in a pressurized metal tube, we hope you'll think of US Airways.'

Heard on a Southwest Airline flight – 'Ladies and gentlemen, if you wish to smoke, the smoking section on this airplane is on the wing and if you can light 'em, you can smoke 'em.'

A plane was taking off from Kennedy Airport. After it reached a comfortable cruising altitude, the captain made an announcement over the intercom, 'Ladies and gentlemen, this is your captain speaking. Welcome to Flight Number 293, nonstop from New York to Los Angeles. The weather ahead is good and, therefore, we should have a smooth and uneventful flight. Now sit back and relax . . . OH, MY GOD!' Silence followed, and after a few minutes, the captain came back on the intercom and said, 'Ladies and Gentlemen, I am so sorry if I scared you earlier. While I was talking to you, the

flight attendant accidentally spilled a cup of hot coffee in my lap. You should see the front of my pants! A passenger in Coach yelled, 'That's nothing, you should see the back of mine!'

On landing, the stewardess said, 'Please be sure to take all of your belongings. If you're going to leave anything, please make sure it's something we'd like to have.

'There may be 50 ways to leave your lover, but there are only 4 ways out of this airplane.'

An airline pilot wrote that on this particular flight he had hammered his ship into the runway really hard. The airline had a policy which required the first officer to stand at the door while the passengers exited, smile, and give the a 'thanks for flying our airline.' He said that, in light of his bad landing, he had a hard time looking the passengers in the eye, thinking someone would have a smart comment. Finally everyone had gotten off except for a little old lady walking with a cane. She said, 'Sir, do you mind if I ask you a question?' 'Why, no Ma'am,' said the pilot. 'What is it?' The little old lady said, 'Did we land, or were we shot down?'

As the plane landed and was coming to a stop at Ronald Reagan, a lone voice came over the loudspeaker: "Whoa, big fella, WHOA!"

After a particularly rough landing during thunderstorms in Memphis, a flight attendant on a Northwest flight announced, 'Please take care when opening the overhead compartments because sure as hell everything has shifted after a landing like that.'

Another flight attendant's comment on a less than perfect landing: 'We ask you to please remain seated as Captain Kangaroo bounces us to the terminal.'

Overheard on an American Airlines flight into Amarillo, Texas on a particularly windy and bumpy day: During the final approach, the Captain was really having to fight it. After an extremely hard landing, the Flight Attendant said, 'Ladies and Gentlemen, welcome to Amarillo. Please remain in your seats with your seat belt fastened while Captain taxis what's left of our airplane to the gate!'