CAIIA Status Report

SEPTEMBER 2011

CCNC is coming!

Each year the CAIIA exhibits at the
Claims Conference of Northern California.
This year it is being held on September 8 and 9 at the Hyatt in downtown Sacramento.

We need your help at the CAIIA Booth.
If you can spare a couple of hours on either or both days, please email Sterrett Harper at harperclaims@hotmail.com.

Supreme Court Decision in Howell v. Hamilton Meats

Submitted by Manning & Kass Ellrod, Ramirez, Trester, Los Angeles, CA

The California Supreme Court has issued its opinion in Howell v. Hamilton Meat & Provisions, Inc., the long awaited case addressing what is commonly referred to as the "Hanif reduction". The issue addressed is whether a plaintiff can recover, as economic damages for past medical expenses, the total amount of the plaintiff's medical bills, or whether the recovery is limited to the amount the provider of that care accepted as full payment pursuant to a preexisting contract with the injured person's health insurer.

The Supreme Court held that recovery is limited to the amount actually paid, for the simple reason that the injured plaintiff did not suffer any economic loss in excess of that amount. "We hold, therefore, that an injured plaintiff whose medical expenses are paid through private insurance may recover as economic damages no more than the amounts paid by the plaintiff or his or her insurer for the medical services received or still owing at the time of trial."

In addition, while (unfortunately) not directly addressing the admissibility of the total amount of the medical bills as opposed to what was actually paid on issues such as noneconomic damages or future medical expenses,

continued on page 3

NOTICE!

As of January 1, 2012, this newsletter will be delivered by e-mail only. If up until now you are only receiving the *Status Report* by regular mail, please send your e-mail address to barrettclaims@sbcglobal.net so that we can keep you on our circulation list. Your e-mail address will not be desiminated or used for any other purpose. We value your readership and welcome any comments you may care to add when sending us your e-mail address.

PUBLISHED MONTHLY BY
California Association of
Independent Insurance Adjusters

An Employer Organization of Independent Insurance Adjusters

Inside This Issue

***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@caiia.org*.

CAIIA Newsletter
CAIIA Office
P.O. Box 168
Burbank, CA 91503-0168
Web site - http:\\www.caiia.org
Email: info@caiia.org
Tel: (818) 953-9200
(818) 953-9316 FAX

Editor: Sterrett Harper
Harper Claims Service, Inc.
Tel: (818) 953-9200

California Association of Independent Insurance Adjusters, Inc

PRESIDENT'S OFFICE
P.O. Box 282
Ukiah, CA 95482
707-462-5647
Email: info@caiia.com
www.caiia.com

PRESIDENT
Phil Barrett
barrettclaims@sbcglobal.net

IMMEDIATE PAST PRESIDENT
Sam Hooper
hooper@hooperandassociates.com

PRESIDENT ELECT
Jeff Caulkins
jeff.c@johnsrickerby.com

VICE PRESIDENT
William "Bill" McKenzie
walshadj@sbcglobal.net

SECRETARY TREASURER
Tanya Gonder
tanya@casualtyclaimsconsultants.com

ONE YEAR DIRECTORS
Kearson Strong
kearson@claimsconsultantsgroup.com

Richard Kern
rkern@sgdinc.com

Art Stromer
artstromer@hotmail.com

TWO YEAR DIRECTORS
Debbie Buse
ncadj@sbcglobal.net

Corby Schmaultz
cschmaultz@jbaia.com

Michael Hale
cics@carterclaims.com

OF COUNSEL
Nancy DePasquale
WILLIS & DePASQUALE, LLP
725 W. Town & Country Rd., Ste. 550
Orange, CA 92868
714-544-6000 • Fax 714-544-6202
ndepasquale@wdlegal.net

PRESIDENT'S MESSAGE

Imagine the U.S. Economy without field adjusters in the P&C sectors of the insurance industry. After all, a lot of claims are handled over the phone these days without an adjuster ever coming face to face with the claimant. Still even with those unexamined loss sites and unvisited claimants, there is still the prospect that an insurer has the option to physically examine a loss or claimant and step up the investigation from an "I trust you" level to "trust, but verify". So what would happen if under all circumstances, insurers never summoned their contract experts, (we adjusters), to investigate an occurrence with all 6 of our senses, (the sixth being the professional intuition peculiar to seasoned and experienced field adjusters)? Would relations between the public and insurers improve or deteriorate? Would fraud increase to crises levels, or just marginally? (I can't envision a decrease.)

Consider this: You're walking down the street. Nobody is within eyesight or earshot. You find a $100 bill lying on the ground. Do you pocket it? Or do you turn it into the lost and found at the police station? My guess is that 9.5 out of 10 people would consider it their lucky day and pocket the cash, some not even hesitating to ponder that some poor soul's loss is now their gain. I think that in general, the same chance to unjustly pad or exaggerate their claim. And while the physical presence of a field adjuster doesn't prevent all fraud, I think even the random public would agree that without us, the P&C sector would deteriorate substantially, perhaps catastrophically. It doesn't take a genius to arrive at this hypothesis.

On the other side of the insurer's ledger, I personally have encountered a lot of policyholders on property claims who might have forfeited significant parts of their rightful claims if not for my presence at the loss location. Let's face if; insurance policies are complicated contracts and most people outside the industry, in my experience, don't really know all that is promised in their policy. Some people are poor communicators and might not be able to convey a comprehensive account of their loss by phone. A skilled field adjuster, with eyes on the scene, would make a difference in this situation to be using his/her visual perception to supplant poor communication modesty or perhaps ignorance on the part of the policyholder by comprehending all aspects of the loss in the context of the policy's coverage provisions. After all, it is not our only job to help insurers resist overpayment. The flip side is to make sure that the insurer accurately pays what is owed. This is not only in keeping with the promise of the insurance contract, it is codified in California's Fair Claims Settlement Practices Regulations. It also helps keep statistics used for actuarials true and accurate and we claims professionals know that predictability and accuracy of loss statistics, regardless of whether they reflect higher or lower experience, is what keeps the industry sustainable.

So let's return to the opening question and what might happed to the U.S. Economy

continued on page 3

Supreme Court Decision . . .

continued from page 1

the court went further in indicating that the amount of the bills actually accepted as full payment was the only evidence relevant on the issue of economic damages. Where a trial jury hears evidence of the amount accepted as full payment by the medical provider but awards a greater sum as damages for past medical expenses, the defendant may move for a new trial on grounds of excessive damages. The Court held that the typical post trial "Hanif motion" is unnecessary, and the trial court, if it grants the new trial motion, may permit the plaintiff to choose between accepting reduced damages or undertaking a new trial.

This is a very favorable opinion for the defense bar. How it is implemented by the trial courts and interpreted by the courts of appeal remains to be seen.

Weekly Law Resume

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

Bad Faith - Private Right of Action Permittedfor Violation of Insurance Code Provision

Chris Hughes v. Progressive Direct Insurance Company Court of Appeal, Second District (June 15, 2011)

Insurance Code Section 758.5 prohibits an insurer from either requiring that an insured's automobile be repaired by a specific automobile repair dealer or suggesting or recommending that a specific repair dealer be used unless the insured is first informed in writing of his or her right to go elsewhere. This case considers whether violation of this section would support a claim for violation of Unfair Competition Laws under Business and Professions Code Section 17200.

Chris Hughes was involved in an automobile accident on August 15, 2005. He was insured by Progressive Direct Insurance Company, and he made a claim for repair to his vehicle. Hughes informed Progressive Direct of his desire to take the car to a particular shop, which he understood was not part of Progressive's "Direct Repair Program." Progressive responded by telling Hughes that he should take his vehicle to Champion Collision and Paint, which was a DRP facility. He was further told that his claim would be approved and the repairs would be performed more quickly. Progressive did not inform Hughes that he had a right to take his car to the shop of his preference. Hughes took the car to Champion, but was ultimately dissatisfied with their work.

Hughes subsequently filed a class action complaint against Progressive Direct. The complaint contained a single cause of action alleging violation of Business and Professions Code Section 17200. In addition to alleging that Progressive Direct enticed its insureds to go to its DRP shops without advising of their rights to go elsewhere, he alleged that Progressive Direct told its insureds that its selection of a dealer as a DRP was based only on that dealer's performance of "the highest quality work." On the other hand, Hughes alleged that the carrier in fact chose its DRP shops because they agreed to Progressive Direct's demand to reduce costs of repairs without regard to the interest of their customers. He also alleged that there was a "company wide policy" to steer insureds to the DRP shops.

Progressive Direct demurred to the complaint. Progressive Direct argued that since Section 758.5 said it was to be enforced by the Insurance Commissioner pursuant to the Unfair Insurance Practices Act (UIPA), and since the Supreme Court had

continued on page 4

PRESIDENT'S MESSAGE

continued from page 2

if field adjusting was suddenly prohibited. Would fraud run rampant, both in terms of opportunistic, "soft" fraud and "hard" fraud where losses are either fabricated or caused intentionally? Would premiums spiral out of control with increase fraud? Will the actuarial be able to keep up with the volatility introduced by fraud and less accurate loss related statistics? Might the insurance market harden as a result of this unpredictability, preventing prospective homeowners and business owner's from obtaining the financing needed to realize their pursuits? If a crisis ensued, would the Federal Government overtake regulation of insurance? What effect would this have on consumers' attitudes toward insurers? Could any good come out of this? Oh yeah – insurers would save on investigation costs . . . Or would they?

PHIL BARRETT

President - CAIIA 2010-11

continued from page 3

held in Moradi-Shalal v. Fireman's Fund Insurance Companies (1988) 46 Cal.3d 287 that there was no private right of action for violation of the UIPA, there was equally no private right of action under Section 758.5. Progressive Direct argued that to rule otherwise would be to circumvent the holding of Moradi-Shalal. The trial court sustained the demurrer without leave to amend. Hughes appealed.

The Court of Appeal reversed. The Court of Appeal noted that like Insurance Code Section 790.03, enforcement for violations of the section was to be handled by the Insurance Commissioner. However, in contrast to Section 790.03, this enforcement was not the exclusive remedy available. In addition, Insurance Code Section 1861.03(a) makes the "business of insurance" generally subject to the provisions of California's Unfair Competition Laws as stated in Business & Professions Code Section 17200. Thus, claims for violation of Unfair Competition Laws may be maintained against an insurer when the alleged conduct, even though violating the UIPA, also violates other statutes applicable to insurers.

Further, the Court noted that here, the allegedly unlawful conduct at issue—failure to provide a statutorily required notice regarding the right to repair—did not approximate the bad faith refusal to settle insurance claims or other claims handling misconduct at the heart of Moradi-Shalal's analysis. Thus, the Court held that recognizing a violation of Section 758.5 as an unlawful business practice thus did not conflict with the Supreme Court's ruling in that case.

Hence, a violation of this statute may serve as the basis for a cause of action for violation of Unfair Competition Laws. The Court reversed the order dismissing the action, holding that the demurrer should have been overruled.

COMMENT

This case further represents the courts' willingness to allow violations of Insurance Code Sections (or the actions behind them) to support a cause of action on behalf of an insured for violation of Unfair Competition Laws. It will be worth noting what the Supreme Court does with a similar issue before it in Zhang v. Superior Court (Weekly Law Resume, NOVEMBER 5, 2009), in which the Fourth District held that violation of the Insurance Regulations supported an Unfair Competition Law cause of action.

Dismissal of Wrongful-Death Suit Upheld Where SWAT Team Use-of-Force During Hostage Situation Found Reasonable

Lorena Lopez v. City of Los Angeles Court of Appeal, Second District (June 13, 2011)

This case addressed whether Los Angeles police officers acted reasonably in an incident that led to a fatal shooting. After affirming that Fourth Amendment excessive force claims and common-law unreasonable use of force claims against law enforcement are judged by the same standard — whether or not the force was objectively reasonable under the circumstances — the Court found the officers involved acted reasonably.

On July 10, 2005, Plaintiff/Appellant Lorena Lopez ("Plaintiff") contacted the police and reported that Raul Pena had threatened to kill Plaintiff, himself and his step-daughter Ilsy.

An inebriated and emotionally unstable Pena took his 19-month old daughter, Suzie, to his auto shop that afternoon. Police assembled outside. Using Suzie as a human shield, Pena stood outside the shop and shot at officers four times. He repeatedly threatened to kill Suzie and "take her to hell with him."

Police rescued Ilsy, also being held in the shop. She confirmed Pena had a handgun and a shotgun and said he was going to kill Suzie.

In the second hour of negotiation with police, Pena disconnected the phone, refusing to negotiate any longer. He proceeded to walk outside the auto shop, holding Suzie as a human shield. Officer O'Sullivan, believing Pena was going to pull his gun and shoot Suzie, fired at Pena in order to stop him.

After O'Sullivan's shot, a four-member SWAT began an emergency assault to prevent Pena from killing Suzie. Entering the shop, they found Pena positioned in an interior office. Through drywall, Pena fired at least six shots at the SWAT team, one of which hit an officer.

After tossing a stun grenade into the office, the team entered and simultaneously fired at Pena, releasing 50-55 shots in 3.5 to

continued on page 5

continued from page 4

6 seconds. Pena, again using Suzie as a human shield, had fired 39 rounds before his death. Both Pena and Suzie died in the assault. A bullet fired by one of the officers killed Suzie.

Plaintiff sued the City of Los Angeles ("City") under two causes of action: negligence and wrongful-death. Plaintiff's sole basis of liability for both causes of actions was use of unreasonable force by the officers. At trial City moved for non-suit. The trial court found that the officers' use of force reasonable and granted the motion.

Plaintiff argued on appeal that she had presented evidence the following conduct was unreasonable use of force: (1) O'Sullivan's decision to fire upon Pena; and (2) the deadly force used in the final assault upon the auto shop. The Court found both arguments unpersuasive. It concluded Plaintiff demonstrated no evidence of unreasonable force and affirmed the trial court's grant of nonsuit.

Plaintiff argued O'Sullivan lacked probable cause to shoot Pena because Suzie was not in danger. The Court, finding the assumption about Suzie's safety "a nonsensical interpretation of the evidence," noted Pena's threats throughout the day and his shots at the police while using Suzie as a human shield. That Pena did not shoot anyone during his negotiation with the police is irrelevant, as Pena: (1) stopped negotiation and refused continue; (2) threatened Suzie during negotiation; and (3) did not surrender. That Pena did not actually point his gun at Suzie at that moment was not significant, as the Court found the police were not required to wait until Pena actually shot Suzie to conclude his threats were real. The Court also disposed of Plaintiff's argument on causation grounds. Plaintiff's two causes of actions were based upon Suzie's death. Because the shot fired by O'Sullivan did not kill her, it did not make City liable for her death.

Plaintiff also argued the final assault was unreasonable because police lacked probable cause to believe Pena posed a substantial threat to Suzie. The Court, referencing its earlier analysis, rejected this argument. Plaintiff further argued the use of deadly force was unreasonable because the police only used it in response to the threat Pena posed to them (not the threat posed to Suzie). The Court rejected this argument as well, finding the evidence demonstrated the SWAT members entered to rescue Suzie. The Court also held that the manner of deadly force exercised by the officers — the number of shots fired in the few seconds — was reasonable because Pena: (1) possessed multiple firearms; (2) was shooting at the officers; and (3) was threatening to kill Suzie. The Court also rejected Plaintiff expert's opinion otherwise, emphasizing that an expert's opinion must be supported by reasons and facts and that an opinion, in and of itself, does not make an officer's actions unreasonable.

COMMENT

This case affirms that the Fourth Amendment objective reasonableness standard for use-of-force by law enforcement applies to common-law claims alleging unreasonable use of force. The fact that a bystander was the subject of that force is irrelevant to the analysis, however tragic the result.

Insurance Commissioner Jones Announces $32 Million in Grants to Local Law Enforcement to Fight Workers' Compensation Insurance Fraud

Funds to aid District Attorneys in investigation, prosecution

Insurance Commissioner Dave Jones today announced nearly $32 million in grants to District Attorneys across the state to assist them with the investigation and prosecution of workers' compensation insurance fraud.

"Workers' compensation insurance fraud is a costly problem in California," said Commissioner Dave Jones. "As the economy struggles to recover, fraud of this type creates an additional strain on the system. We must protect those injured workers who need care and compensation so they can return to work in a timely manner and bring to justice those who seek to cheat the system."

The grant funding is the result of assessments on California employers that are determined annually by the Fraud Assessment Commission. Counties submit applications to the Department, which convenes the Workers' Compensation Grant Review Panel who then reviews and makes grant funding recommendations based on multiple criteria including previous year performance. The panel then forwards a recommendation to the Insurance Commissioner who either accepts or amends the panel's recommendation. Once completed, the Commissioner's recommendation is submitted to the Fraud Assessment Commission for their advice and consent.

The grants are subject to approval in the final state budget (FY 2011-12).


Register NOW for the 18th Annual
Claims Conference of Northern California
Claims Conference of Northern California, Inc.
Thursday & Friday
September 8-9, 2011
Hyatt Regency
Downtown Sacramento
The Wave of Success
Are You On-Board?
Two days of continuing education accredited seminars, tradeshow and networking events for insurance claims professionals.
Claims Conference of Northern California, Inc.
Get On Board Now!
Continuing Education Credits*
Eleven (11) hours California & Texas DOI Accreditation
for Independent Adjusters, Agents & Brokers
RPA & MCLE accreditation approved
* DOI CE credits pending
Early-Bird Registration Now Open
rates go up August 1, 2011
www.ClaimsConference.org
2011 CCNC Grand Sponsors
RBI
Regional Builders, Inc.
SERVPRO®
Sierra Environmental Testing and Consulting, Inc.
ANN
Association News Network, Inc.

CAIIA REGISTRATION FORM
California Association of Independent Insurance Adjusters
ANNUAL FALL CONVENTION & DANCE –September 29th and 30th 2011

THE QUEEN MARY. HOTEL ATTRACTIONS EVENTS

The Queen Mary
1126 Queens Hwy
Long Beach, CA 90802
Phone 562-499-1749

THE QUEEN MARY. HOTEL ATTRACTIONS EVENTS

Mention California Association of Independent Insurance Adjusters or reference the reservation code "CAIIA" for special room rates of $110 inside stateroom/ $128 deluxe stateroom per night, plus tax.
Attendees must make their own hotel reservation: call 1-800-437-2934 for reservations

Your Name _____ Spouse/Guest _____

Company _____

Address _____

Phone _____ Fax _____

E-Mail _____

EVENT	COST	#TICKETS	Total Price
Member Convention Package (*) *(Includes reception, breakfast, CE Class/ lunch/ dinner)*	$ 150.00	#_____	$_____
Non-Member (**) Convention Package *(Includes reception, breakfast, CE Class/ lunch/ dinner)*	$ 175.00	#_____	$_____
Spouse/guest fee (***) *Name*_____	$ 100.00	#_____	$_____
4 Hour CE Class (Includes breakfast, presentation, lunch)	$100.00	#_____	$_____
President's Gala Dinner/Reception	$ 100.00	#_____	$_____
	Grand Total Payable		$_____

SCHEDULED EVENTS

Please specify which events you and/or your spouse/guest will attend by placing a check mark in the box next to the event.
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
9/29 – 6:30 P.M	Reception on the Queen Mary	[ ]	[ ]
9/30 – 7:00 A.M.	Registration/Breakfast	[ ]	
9/30 – 8:00 A.M.	Seminar	[ ]	
9/30 –12:00 P.M.	Lunch	[ ]	
9/30 – 1:30 P.M.	Business Meeting (*)	[ ]	
9/30 – 6:30 P.M.	Reception/Cocktail Hour	[ ]	[ ]
9/30 – 7:30 P.M.	President's Inaugural Dinner Dance	[ ]	[ ]

John S Rickerby Company
300 East Glenoaks Blvd. 2nd floor
Glendale, CA 91207
jeff.c@johnsrickerby.com
Office **818-507-7873**

Credit Card:	AMEX VISA M/C Circle one	3 Digit Security # (CV)	
Cardholder:		Signature:	
Card No.		Expiration Date:	
Card Address (City/State/Zip)			

(*) Members only

(**) We welcome the attendance and participation of insurance company and risk management claims personnel and attorneys at the President's Gala Dinner Event, the Educational Seminars, and Luncheon following seminars.

(***) Spouse/guest fee includes alternative activity, breakfast and dinner on Friday.
For details on spouse/guest activity: email at wifeandmamma@sbcglobal.net

Early registration is encouraged. Cut-off date for contracted room rate is August 29 ,2011.

Heavy Scientific Staff – for my intellectual friends

1. *Ratio of an igloo's circumference to its diameter = Eskimo Pi*
2. *2000 pounds of Chinese soup = Won ton*
3. *1 millionth of a mouthwash = 1 microscope*
4. *Time between slipping on a peel and smacking the pavement = 1 bananosecond*
5. *Weight an evangelist carries with God = 1 billigram*
6. *Time it takes to sail 220 yards at 1 nautical mile per hour = Knotfurlong*
7. *16.5 feet in the Twilight Zone = 1 Rod Sterling*
8. *Half of a large intestine = 1 semicolon*
9. *1,000,000 aches = 1 megahurtz*
10. *Basic unit of laryngitis = 1 hoarsepower*
11. *Shortest distance between two jokes = a straight line*
12. *453.6 graham crackers = 1 pound cake*
13. *1 million-million microphones = 1 megaphone*
14. *2 million bicycles = 2 megacycles*
15. *365.25 days = 1 unicycle*
16. *2000 mockingbirds = 2 kilomockingbirds*
17. *52 cards = 1 decacards*
18. *1 kilogram of falling figs = 1 FigNewton*
19. *1000 milliliters of wet socks = 1 literhosen*
20. *1 millionth of a fish = 1 microfiche*
21. *1 trillion pins = 1 terrapin*
22. *10 rations = 1 decoration*
23. *100 rations = 1 C-ration*
24. *2 monograms = 1 diagram*
25. *4 nickels = 2 paradigms*
26. *2.4 statute miles of intravenous surgical tub ing at Yale University Hospital = 1 IV League*
27. *100 Senators = Not 1 decision*