

# CAIIA Status Report

OCTOBER 2004

## New Fair Claims Practices Regulations

The California department of Insurance is making life interesting for adjusters AGAIN. An amended set of the Fair Claims Settlement Practices Regulations are effective on October 4, 2002.

We will have a detailed discussion of the new regulations at the annual meeting of the CAIIA being held on October 14 and 15, 2004. Elsewhere in this issue is the registration form for the convention.

There are many changes of which all adjusters need to be aware. The amendments are not as severe as the last set put on hold by the courts, but still have many changes to them from the set, which is effective until October 4, 2004.

If you attend the CAIIA Annual meeting you will be able to find out all about the changes.

SEE YOU IN ANAHEIM!!!!

## Federal Conviction Upheld of California Man with History of Sunken Yachts

September 1, 2004

A federal appeals court Aug. 30 upheld the conviction of a lawyer who tried to sink his \$1.9-million yacht and then sought nearly double the price in insurance payments.

The court upheld the conviction of Rex DeGeorge for conspiracy, mail and wire fraud and perjury. However, the three-member panel threw out an enhancement of obstruction of justice, which may reduce the 90-month sentence DeGeorge currently is serving.

DeGeorge was convicted in March 2002 in Los Angeles for attempting to sink the 76-foot custom-built Principe di Pictor.

He previously had received insurance payments after claiming two other boats sank and one was stolen.

According to court testimony, the lawyer and two other men left Viareggio, Italy, on the Principe without a captain on Nov. 6, 1992, and cut holes in the bottom of the boat in an unsuccessful attempt to sink the yacht.

When the men were rescued by Italian authorities hours later, they reported that their hired captain had tried to sink the boat before fleeing in a speedboat.

The men were briefly jailed in Italy before returning to the United States, where they filed a claim with their insurance company, Cigna.

Cigna refused to pay and rescinded the yacht's policy, alleging the value of the yacht had been inflated and that DeGeorge had hidden his ownership of the boat by moving it through several corporations.

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An Employer  
Organization of  
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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@caii.org](mailto:info@caii.org).

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## ■ PRESIDENT'S MESSAGE

I mentioned once before that I had the opportunity to read many prior messages from CAIIA Presidents in this space, going back several years. It is clearly apparent that a fine and well established tradition has stood the test of time over the years.

In the last (of twelve) messages written by so many outgoing Presidents in the October issue of The Status Report, they marveled at the swift passage of time since taking office twelve months earlier, congratulated the incoming President, thanked all of the Officers and Board members with whom they served, and, usually, added positive comments about this Association of California Independent Insurance Adjusters, the CAIIA itself.

I won't break this tradition, for sure. It does seem just a short while ago that I was inaugurated as President of the CAIIA, at the Embassy Suites in Sacramento, in October of 2003. Like most incoming Presidents, I set forth my agenda for the upcoming year, and spoke of my own path through the Board of Directors (twice) and then as an Officer, of the CAIIA.

Did we accomplish everything we set out to do this past year? Probably not, but I am proud to say the organization is flourishing as we move toward our 58<sup>th</sup> year, and it is in very good hands indeed. Doug Jackson, of Southwest Claims, takes the helm as President this month, and Peter Schifrin, of Schifrin, Gagnon & Dickey will become the newest Officer, as incoming Secretary Treasurer. Thad Eaton of Eaton and Johnson, Bill Scheler of Dunlap Claims Service, and Dave Ceresa of AIMS will be the new 2 year Board members. Outgoing Board members are Mike Kielty of George Hills Co., Sam Hooper of Sam Hooper & Associates, and Rob-



ert Lobato, of Pioneer Claims Services.

Steve Tilghman leaves the Executive Committee, and will now be an active CAIIA member, and Past President.

I would like to thank and congratulate each of these individuals who have done so much for this organization. The CAIIA wouldn't be much without all the work of these volunteers, and my hat is off to all of them.

I wish to extend in particular heartfelt congratulations to Doug Jackson – Doug, I don't know whether you are a Democrat, Republican, (or other), and I don't care, but you are clearly The Man for 2004/2005!

Best Wishes to you all, and I once again thank the members of this organization for allowing me to be President for a year, and now, a Past President. I have no doubt there is no finer association of insurance claims professionals anywhere!

**LEE COLLINS, ARM**  
President - CAIIA 2003-2004

# ■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

## Coverage – Automobile – Passenger

Ace American Insurance Company v. Jessica Walker, Court of Appeal, Third District, (August 24, 2004) Jessica Walker was injured in a car accident while riding as a passenger in a vehicle driven by Kai Sheng Hou (Kai). The vehicle was registered to Kai's father, Hsin Jen Hou (Hsin). Walker sued Hsin, Kai, the Buta Buddhism Research Center (BBRC), and Hou's Institution. Ace American Insurance Company (Ace) insured Hou's institution under a CIGNA property and casualty commercial general liability policy. Walker's claim was tendered to Hsin's automobile carrier, Farmers Insurance Group. Farmers defended Hsin and BBRC. A tender was also made to Ace, which indicated it would defend under a reservation of rights. The Farmers policy limit was \$25,000. The Ace policy limit was \$1 million.

Ace filed a complaint for declaratory relief against Hsin, BBRC and Hou's Institution seeking a declaration it had no duty to defend or indemnify. Meanwhile, in the Walker action, a settlement was reached whereby the Walker defendants stipulated to liability, Farmers paid their policy limits of \$25,000 and the defendants assigned to Walker any cause of action they had against Ace. In return, Walker agreed not to execute on any judgment entered against the defendants.

In the declaratory relief action, Ace filed a motion for summary judgment. The trial court granted Ace's motion. It was based upon an exclusion in the policy for bodily injury arising from use of an automobile by the insured. A judgment of dismissal followed. Walker appealed.

The Court of Appeal affirmed. The Court stated the Ace policy listed as named insured Hou's institution and Hsin. The policy indicated it was issued to an individual. The policy provided coverage for the individual and with respect to the conduct of any business of which he or she was the sole owner. The policy excluded coverage for bodily injury arising out of the use of an automobile owned or operated by any insured. Ace contended the policy provided

no coverage for the accident because the claim did not arise from the conduct of a business of which Hsin was the owner and because the policy excluded coverage for bodily injury arising out of the use of an automobile. The court felt the automobile exclusion was unambiguous and thus applied to this case. Because there was no possibility of coverage, there was no duty to defend.

As a result, the Court held that because there was no possibility of coverage, the claimant was barred from bringing any bad faith lawsuit. The judgment in the declaratory relief action was therefore affirmed.

## COMMENT

This case affirms the traditional rule that general liability policies do not provide coverage for automobile accidents. The only unusual aspect of this case was the confusion as to the named insured and their role in this case.

## Civil Procedure – Releases

Carolyn Claxton v. Ray Waters, California Supreme Court, (August 30, 2004).

A release is normally intended to resolve all disputes between the parties. This Supreme Court case considered whether a release of a workers' compensation claim barred a right to bring a civil action outside the scope of workers' compensation.

Carolyn Claxton, an office assistant for the Pacific Maritime Association (PMA), was supervised by Ray Waters. On December 16, 1997, she filed a workers' compensation claim against PMA for injury to her left lower extremity and psyche from a slip and fall that occurred on May 7, 1997. On January 16, 1998, she filed a second workers' compensation claim against PMA for injury to her psyche due to sexual harassment. On September 15, 1998, she filed a civil action against PMA and Waters alleging sexual harassment. On February 25, 1999, Claxton and PMA settled the workers' compensation claim.

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# ■ Weekly Law Resume

*Prepared by Low, Ball & Lynch, Attorneys at Law*

Claxton executed a preprinted compromise and release form. The form made reference to the two workers' compensation claims, but no reference to the pending civil action. The form contained a preprinted release of all known or unknown claims.

PMA and Waters moved for summary adjudication of the civil action on the basis that the settlement of the workers' compensation claim barred the civil action. The trial court granted the defendants' motion. Claxton appealed. The Court of Appeal reversed. PMA and Waters petitioned the Supreme Court for review, and the court granted review.

The Supreme Court affirmed the reversal by the Court of Appeal. The Court noted that claims based on sexual discrimination are not subject to the exclusivity provisions of the workers' compensation. Such claims may be pursued in both the workers' compensation proceeding and a civil action. Under the workers' compensation system, a release does not release certain claims unless specific findings are made. Further, an intent to release particular benefits must be established separately. Following that logic, the court held that in order to establish that a release in a workers' compensation proceeding released a civil action, express language to that effect must be in the release. The preprinted language in a workers' compensation compromise and release applies only to workers' compensation claims.

The Court further held that extrinsic evidence was not admissible to show that the standard preprinted workers' compensation release form also applied to claims outside the workers' compensation system. The reasons given included the time and money involved in presenting this evidence and the public policy of protecting an injured worker against the unintentional loss of rights. The Court further stated this problem could be corrected by having the parties execute a separate release of the civil action. Because the ruling of the Court changed the existing law on the admissibility of extrinsic evidence to show the related civil action was to be released, the

court held its ruling should be applied only prospectively. The decision of the Court of Appeal was therefore affirmed in reversing the summary judgment granted to the defendants.

## COMMENT

*This opinion establishes a new rule for workers' compensation releases. It holds that a release of any civil claim outside the scope of the workers' compensation system must be set forth by specific language.*

## Civil Procedure – Mediation – Confidentiality

*Genoveva Rojas v. Superior Court*, California Supreme Court, (June 12, 2004).

Mediation is a confidential process designed to settle cases. This case considered whether any materials produced at the mediation fall outside the confidentiality protections.

Julie Coffin sued Deco Construction Corporation (Deco) alleging water leakage due to construction defects had produced toxic molds in an apartment complex she owned. In the course of the litigation, Coffin prepared a preliminary defect list, a report of air testing, documents related to demolition and replacement of drywall and ceilings, application of antimicrobial agents, and plumbing repairs. As a result of mediation, the litigation settled.

Thereafter, several hundred tenants of the complex filed suit against Deco, Coffin and others alleging health problems. In this litigation, the tenants served requests for production of all documents generated in the prior litigation between Coffin and Deco. Coffin and Deco opposed the demand, arguing that some of the documents were prepared for mediation and thus were not discoverable. Despite several attempts and motions, the trial court refused to allow any documents produced for the mediation to be sub-

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# ■ Weekly Law Resume

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*Continued from page 4*

ject to discovery.

The tenants sought a writ of mandate in the court of Appeal. The court of Appeal ruled that the mediation privilege protected only the substance of the mediation and not evidence produced at the mediation. Thus, raw test date, photographs and witness statements were subject to discovery. It further held material developed from the evidence was discoverable upon a showing of good cause. The Court of Appeal ordered the trial court to conduct a review of the material to determine what was subject to production. A petition for review filed by Coffin and Deco was granted by the Supreme Court. The Court noted that mediation is encouraged as a means of resolving litigation. In order to encourage mediation, the Legislature has enacted several mediation confidentiality provisions. Section 1119 of the Evidence Code provides broad protection for material prepared for mediation. The Supreme Court stated this protection applied to photographs, witness statements and raw test data reports. These items all fall within the scope of documents protected by the mediation privilege. Section 1120 exempts from protection documents used at the mediation, but not prepared for the purpose of or in the course of or pursuant to a mediation. This prevents mediation from being used as a pretext to shield material from disclosure.

The Court stated its interpretation was consistent with the legislative history of the statute. Furthermore, any other ruling would be inconsistent with the overall purpose of mediation. The court concluded that the Court of Appeal erred in holding that photographs, videotapes, witness statements and raw test data that were prepared for the purpose of the mediation were not protected. The Court of Appeal also erred in holding that charts, diagrams, information compilation, expert opinions and reports were discoverable upon a showing of good cause.

The Court noted there are exceptions to these rules, including Section 1122, which permits discovery of

protected material prepared by fewer than all of the mediation participants if they agree to disclose the documents and the disclosure would not reveal anything said or done during the course of the mediation. There is also an exception for discovery of protected material if all persons who participate in the mediation agree to it. There also are exceptions for settlement agreements made or prepared pursuant to the mediation. These narrow exceptions showed no evidence of a legislative intent to create any additional exceptions for "good cause".

The Court stated the mediation privilege was important and people would be less willing to mediate if material prepared for a mediation could be discovered upon a showing of good cause. The judgment of the Court of Appeal was therefore reversed.

## COMMENT

This opinion was issued by the Supreme Court, even though the case settled on appeal. The plaintiff's bar has vowed to try and change the decision through legislative action.

## ■ CAIIA Calendar

### ■ CAIIA Annual Conference

October 13th, 14th, & 15th, 2004

The Disney Grand Californian, Disneyland Resort  
Anaheim, CA

Contact: Doug Jackson, 805-584-3494, ext. 11

### ■ CAIIA Mid-Term

February 25th thru 28th, 2005

~ CRUISE ~ from Los Angeles to Ensanada & back.

Contact: Doug Jackson, 805-584-3494, ext. 11

### ■ 17th Annual Combined Claims Conference

March 15th & 16th, 2005

Contact Brenda at 888-811-6933.

# California Governor Signs Homeowners Legislation

August 31, 2004

Governor Schwarzenegger recently signed two bills, AB 2199 (Kehoe) and SB 64 (Speier), that were considered part of Insurance Commissioner John Garamendi's "Homeowners Bill of Rights" package. Garamendi said that the legislation will provide needed protection to California Homeowners.

Assembly Bill 2199 prohibits an insurer from starting the clock on any time limit to pay full replacement cost until the first payment toward the actual cash value is made to the policyholder. It also extends the time to rebuild or replace homes to 12 months from the date that the first payment toward the actual cash value is made (24 months in the event of a declared state of emergency). In the event of a total loss, the bill allows homeowners to rebuild their homes in a location other than where the loss occurred. The bill is an urgency measure that was signed by the governor on August 25.

Senate Bill 64 allows homeowners and insurers to mediate disputed homeowner's insurance claims on a voluntary basis through the California Department of Insurance after a declared state of emergency. The cost of the mediation will be borne by the insurer up to a maximum of \$1,500. The legislation is an urgency measure that was signed by the governor on August 30.

## The Question:

You are driving down the road in your mini van on a wild, story night when you pass by a bus stop and you see three people waiting for the bus:

1. An old lady who looks as if she is about to die.
2. An old friend who once saved your life.
3. The perfect partner you have been dreaming about.

Which one would you choose to offer a ride to, knowing that there could only be one passenger in our car?

Think before you continue reading.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

This is a moral/ethical dilemma that was once actually used as part of a job application.

You could pick up the old lady, because she is going to die, and thus you should save her first.

Or you could take the old friend because he once saved your life, and this would be the perfect chance to pay him back.

However, you may never be able to find your perfect mate again.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

The candidate who was hired (out of 200 applicants) had no trouble coming up with his answer. He simply answered:

"I would give the car keys to my old friend and let him take the lady to the hospital. I would stay behind and wait for the bus with the partner of my dreams."

Sometimes, we gain more if we are able to give up our stubborn thought limitations. Never forget to "Think Outside of the Box".

## ■ Insurance Law Update

Submitted by

Bruce D. Celebreeze - Sedgwick San Francisco

### California's Equitable Tolling Rule Confirmed

*Marselis v. Allstate Ins. Co.*, California Court of Appeal

The plaintiff in *Marselis v. Allstate Ins. Co.*, 121 Cal.App.4<sup>th</sup> 122, 16 Caql.Rptr.3d 668 (2004), tested the equitable tolling rule established by the California Supreme Court in *Prudential-LMI Com. Insurance v. Superior Court*, 51 Cal.3d 674, 693 (1990). The *Prudential-LMI* rule tolls the limitations period for actions on insurance claims from the time the insured notifies the insurer of the claim until coverage is denied.

Following California's Loma Prieta earthquake, Marselis submitted a claim on which Allstate paid over \$90,000 for structural damage and engineering services. Nearly two years after Allstate's payment, Marselis attempted to reopen her claim. She argued that, because coverage was not denied on her original claim, and she did not receive an unequivocal written statement from Allstate informing her that the claim was closed, the limitations period was tolled even after she received payment on the claim.

The California Court of Appeal rejected Marselis' argument, noting that such an extension of the equitable tolling rule would be antithetical to its very rationale – to avoid penalizing the insured for the time consumed by the insurer investigating the claim, while preserving the central idea that an insured will only have 12 months to institute suit.



### CAIIA REGISTRATION FORM

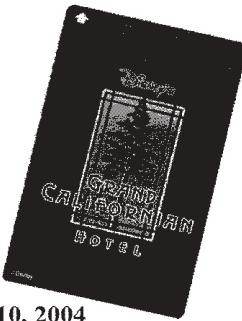
California Association of Independent Insurance Adjusters  
ANNUAL CONVENTION – October 13, 14, & 15, 2004

#### Disney's Grand Californian Hotel

1600 South Disneyland Drive, Anaheim, CA 92802

(714) 520-5005 Mention CAIIA

Standard Room Rate \$169 (single/double); \$184 (triple); \$199 (quad)  
1 bedroom Artisan Suite \$670 (rooms available on first come basis)  
(plus taxes, premium views/concierge floors extra; resort fee paid by CAIIA entitles  
use of gym, self-parking, free local calls, rate good 3 days before or after event)



**Attendees must make their own hotel reservations. Hotel Cut-off Date is September 10, 2004**

Your Name \_\_\_\_\_ Significant Other \_\_\_\_\_  
Company \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_  
E-Mail \_\_\_\_\_

- Association members must purchase a complete registration package. Employees of members are welcome to purchase full or partial events.
- Package includes all events below. CAIIA Member Employees may attend the educational seminars only with a member's purchase of a registration package. Insurance personnel guests (\*) may purchase President's Gala Dinner Event and Educational Seminar 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 you are insurance personnel guest (\*), please indicate # 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 (10/14/04)	\$ 30.00	_____	\$ _____
Education Seminar including lunch and parking (available to member employees or insurance company guests only)*	\$ 25.00	_____	\$ _____
<b>Grand Total Payable</b>			\$ _____

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

Please make your checks payable to CAIIA

or pay by credit card.

Mail Registration form

and payment to:

Douglas Jackson  
Southwest Claims Service, Inc.  
P.O. Box 1810  
Simi Valley, CA 93062-1810  
[scsdj@southwestclaims.com](mailto:scsdj@southwestclaims.com)

Credit Card: AMEX \_\_\_\_ VISA \_\_\_\_ M/C \_\_\_\_

Cardholder \_\_\_\_\_

Card # \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Any Questions, please call or email (Doug Jackson):

Lee Collins, Bragg & Associates – (916) 960-0902

Douglas Jackson, Southwest Claims – (805) 584-3494

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

\*\* Your Association has drastically reduced the registration this year. Take advantage of these price reductions by attending your CAIIA Annual Convention. Exciting spouse program scheduled.

**Cut-off date is September 15, 2004. Any registration after that date is subject to a \$35.00 late fee.**

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