

NOVEMBER 2003

The Status Report Now Available By E-Mail

After much work by many people, the *Status Report* is now available in a PDF format by e-mail. In order to view the *Status Report* you will need Adobe Acrobat Reader. This is a free program and is available by downloading the program from the internet. In fact, most computers already have Adobe.

You now have your choice of receiving the *Status Report* by e-mail, U.S. Mail or both.

E-mail Sterrett Harper at harperclaims@hotmail.com and let him know if you now want the *Status Report* by e-mail.

Re-certification Seminars Coming

Each year all adjusters are required to be re-certified in the California Fair Claims Settlement practices Regulations. The CAIIA is now setting up the seminars throughout the State. We will have the dates and locations of this year's re-certification seminars in the next Status Report.

As of press time, the revised regulations are still in front of the court. The CAIIA will hold seminars on the revised regulations, if, and when, they become effective.

L.A. Man Pleads No Contest to Two Fraud Counts

October 12, 2003

A Los Angeles man pleaded no contest to two felony counts of insurance fraud after CDI Fraud investigators determined that he misrepresented injuries allegedly sustained in his workplace.

Tommy Lee Robinson, 55, claimed he injured himself while moving materials in his position as a Quality Control Inspector at Cherokee International, a manufacturing company in Irvine, Calif. Robinson was sentenced on Sept. 17 in Orange County Superior Court to 90 days in jail and ordered to pay \$11,562 in restitution, \$200 in fines, and serve three years formal probation.

Investigators found that in April, 1998 Robinson reported the injury to his supervisor and was referred to a physician for evaluation and treatment. Robinson returned to modified work duties, but continued to complain of pain, eventually requiring back surgery in 2001. During his deposition on the injury Robinson stated that he always used his cane to walk. However, a two-month hidden videotape investigation in 2001 reportedly revealed that Robinson walked without a cane and without any signs of discomfort.

The treating physician's original diagnosis of a 100 percent disability rating would have provided Robinson a payment of \$20,000 per year for the remainder of his life and would have cost the insurance company approximately \$250,000. After reviewing the videotape, the physician changed Robinson's disability rating to 24 percent, and Robinson settled his injury claim at a total cost of \$14,500.

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■ **PRESIDENT'S MESSAGE**

I can remember the first time I ever read this "President's Message" column. Bud Hills, President of George Hills Company, my then employer, became the 83/84 CAIIA President. I recall feeling some vicarious pride – the head of our company was now the President of the California Association of Independent Insurance Adjusters! I'm quite sure if I had encountered a peer or competitor somewhere, I might have even bragged a little. I still feel that pride today, and I am quite honored to have been selected to be President of this 56 year old association. Our list of past presidents is quite long, and distinguished, and the name of Steve Tilghman will soon be added to that list. I would like to thank Steve, and congratulate him on a great term of office. His leadership and vision are exactly what associations like ours need, and thrive on. Our organization is growing stronger, and member participation and volunteer effort have increased greatly in the past few years. Special thanks also to all other Board Members and Officers are in order as well.

The CAIIA was born in 1947, by coincidence the same year I came into this world. Early CAIIA records show the typewriter was king, and "cc" could be taken literally – files were full of real carbon copies. There were no zip codes then, and phone numbers didn't begin numerically, but with names like "Madison", "Sutter", and "Trinity". The CAIIA emblem you see on the front cover of this Newsletter came after some debate - other logos included the Great Seal of the State of California, underneath an Imperial Eagle, or a great bear.

How far we have come in 56 years! Now the computer is king, and it will surely dominate the future of this organization, our individual businesses, and reporting to clients. That became very clear (as if it wasn't already) at our Advisory Council panel discussion, held as part of our annual Fall Convention from October 8 through 10, in Sacramento. While the telephone will continue to be important, providing instant communication between an adjuster in the field, and the client he or she is reporting to, reporting



to clients via the internet will be not only necessary, but mandatory.

The Annual Conference this year (held in conjunction with the NAIIA Western Regional meeting) was very successful, and we thank the Advisory Panel participants – many commented the panel discussion was the best in years, or ever! John Hagerty of CIG Insurance, Tim Healy of Deans & Homer, Ric Meyer of Atlantic Mutual, Ric Burwell of A. Teichert & Son, Inc., and Dennis Timoney of SDRMA, all participated in an excellent question and answer session with members of the NAIIA, and of the CAIIA.

A very big thank you as well to Ray Coates and Chad Ankele of Low, Ball & Lynch, who so ably presented their Legal Liability Update during our All Industry Day Seminar. The ten sponsors of the Seminar deserve our gratitude – without their participation we could not put on such a quality conference!

I look forward with anticipation to the coming year as President of the CAIIA. I will be presenting my thoughts and ideas in this column for the next 11 months, and I welcome your comments, suggestions and input – e-mail me at lee.collins@gbbragg.com

LEE COLLINS, ARM

President - CAIIA 2003-2004

EXCELLENT CONFERENCE IN SACRAMENTO ON OCTOBER 8TH, 9TH & 10TH

Your CAIA, in conjunction with the National Association of Independent Insurance Adjusters, co-hosted the Advisory council meeting, as well as the Legal Liability Update Seminar.

Approximately 26 member firms were in attendance for all sessions.

On Thursday morning, October 9th, the Advisory Council session was heard. Representing the industry was Dennis Timoney, D.D.R.M.A.; Ric Burwell, A. Teichert & Son, Inc.; Rick Meyer, Atlantic Mutual Insurance; John Hagerty, C.I.G. Insurance; and, Tim Healy, Deans & Homer.

The National Association was represented by Tom Wilton and Dan Price. Your Association was represented by Lee Collins and Steve Tilghman. The final panel member was John Hook, Counsel of the CAIA.

The following questions were asked with much participation by the audience.

- Discussion of Standards and Guidelines
- Adjuster keep track of legal changes
- Common Technology
- Marketing of our services to companies
- AIC,CPCN,RPA,ARM – Should companies recognize designations
- Assure our directories get into the proper hands
- CAIA/NAIA Market to companies
- Web Pages – Are they useful?

There was excellent interchange between the insurance industry, as well as the adjusting industry. The additional questions and answers that were raised by these questions gave a better insight as to what the insurance industry is looking for with independent adjusters.

Legal Liability Update – Raymond Coates and Chad Ankele gave a terrific presentation on significant insurance coverage cases and recent developments in tort litigation. The firm of Low, Ball & Lynch have always been friends to the insurance industry and their independent adjusters.

There were approximately 80 adjusters and industry personnel in attendance and some of the recent developments in California Law were discussed. These included Products Liability/Street Liability, Proposition 51/Good Faith Settlement/Proposition 213, Releases/Indemnity Landowner Liability, Discovery/Civil Procedures/Evidence, Negligence, Assumption of Risk and Peculiar Risks.

The CAIA wishes to thank the generous support of all of the sponsors listed below.

El Dorado Service Team, Barbara Prosch, Diamond Springs, CA; *Klein & Co.*, Karen Schuster, Aliso Viejo, CA; *VERILEGAL*, Anne Saunders, San Francisco, CA; *Garrett Engineering*, Ben Turner, Long Beach, CA; *CKM Staffing*, Gary Mingus, Rocklin, CA; *Enterprise Rent-a-Car*, Dirk Ruinard, Huntington Beach, CA; *Environmental Science Consulting*, Chris Heintz, Lodi, CA; *Pipe Pros*, Randy Agnetti, Concord, CA; *Heritage Contents Inventory*, Ron Oates, Loomis, CA; *RGL Forensic Accountants*, Jim McCurley, Rancho Cordova, CA.

Insurance Law Update

Submitted by Sedgwick, Detert, Moran & Arnold, LLP

EFFECT OF INSURER'S FAILURE TO SETTLE

In *Wolkowitz v. Redland Ins. Co.*, 2003 WL 22211362 (Cal.App. 2003), the insurer had the opportunity to settle an underlying personal injury action within its \$500,000 policy limits, but it declined to do so. The insured then filed for bankruptcy. The bankruptcy trustee and the claimant agreed to value the claim at over \$26 million; this amount was "approved" by the bankruptcy court. In the subsequent bad faith action, the California Court of Appeal refused to find that the "approval" by the bankruptcy court was sufficient to bind the insurer. Until there is a judgment against the insured after a trial, the insurer could not be held in bad faith for failure to settle within limits.

PUNITIVE DAMAGES

In *Henley v. Philip Morris, Inc.*, 2003 WL 22211589 (Cal.App. 2003), the California Court of Appeal reduced a punitive damage award by following the guideposts identified by the U.S. Supreme Court last April in *State Farm v. Campbell* for determining a constitutionally acceptable punitive damage award. In an action against a tobacco company for alleged personal injuries, the jury awarded compensatory damages of \$1.5 million and punitive damages of \$50 million. The trial court reduced the punitive damages to \$25 million. Following *State Farm v. Campbell*, the Court of Appeal found that the punitive damages could not exceed \$9 million. The court discussed the factors considered in *Campbell*, and concluded that a six-to-one ratio would be appropriate in the circumstances.

SEALING OF COURT DOCUMENTS

In *Huffy Corp. v. Superior Court*, 2003 WL 22172355 (Cal.App. 2003), an insurer engaged in coverage litigation sought to file several thousand documents with the court under seal. The California Court of Appeal held that, before documents may be filed under seal, the trial court must hold a hearing and expressly find that is (1) an overriding interest supporting the sealing of the documents, (2) a substantial probability that such interest will be prejudiced absent sealing, (3) provide that the sealing must be narrowly tailored to serve the overriding interest, and (4) conclude that there must be no less restrictive means of achieving the overriding interest.

CONTRIBUTION BETWEEN INSURERS

In *St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co.*, 4 Cal.Rptr.3d 416 (Cal.App. 2003), in discussing the doctrine of equitable contribution between insurers, a California appellate court held that when additional insured endorsements, by their terms, depend on the existence of a written contract between the named insured and the additional insured (as is generally the case), the underlying contract is significant circumstance in determining the objective reasonable expectations of purported additional insured for insurance coverage under the policy from which coverage is sought. In interpreting the indemnity language in the underlying contracts, the court found that the party claiming to be an additional insured had no reasonable expectation of coverage for its own negligence or strict products liability. This case clarifies that the equitable contribution rights among insurers are dependent upon the language of the underlying contracts between the insureds, not simply the provisions of the insurance policies.

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While not specifically endorsing the above listed firms, the CAIIA gratefully acknowledges these generous sponsors whose participation has helped us defray the costs of this newsletter.

■ HRB Insurance Law Update

Submitted by Hancock, Rothert & Bunshoft, LLP

Modern Development Company v. Navigators Insurance Company

California Court of Appeal

Second District, Division Eight

Case No. B157874

Filed July 31, 2003; Pbl. August 29, 2003

The California Court of Appeal held that a comprehensive general liability insurer owed no duty to defend a lawsuit concerning an insured's alleged failure to comply with laws regarding access for disabled persons, because the claim did not give rise to an "occurrence" that could trigger coverage under the insurance policy in question.

This case arose when the insured was sued for failure to comply with the Americans with disabilities Act and other similar statutes. The insurer, Navigators, declined to defend or indemnify on the grounds that the complaint did not allege "bodily injury" or "property damage" caused by an "occurrence". The insurance policy at issue defined "occurrence" to mean "an accident, including continuous or repeated exposure to substantially the same general harmful conditions". The Court of Appeal affirmed the trial court's ruling that the insurer did not own a duty to defend the underlying lawsuit, because the complaint against the insured did not allege facts showing an accidental, unforeseen occurrence sufficient to trigger the duty to defend.

The Court of Appeal noted that there are no prior published opinions addressing facts similar to the circumstances presented in this case.

■ CAIA Calendar

■ Combined Claims Conference (CCC)

March 23-24, 2004

Pacific Palms Conference Center, Industry Hills, CA

Contact: Brenda Reisimger, 888-811-6933

■ CAIA Midterm Meeting

Wednesday, March 24, 2004 to Thursday, March 25, 2004

The Marriott Newport Beach and Tennis Club, Newport Beach, CA

Contact: Lee Collins, 916-783-0100

■ Annual Conference

October 2004

Sheraton Universal, Universal City, CA

Contact: Lee Collins, 916-783-0100

CCCALA Launches 'Lawsuit Recall' Election

Oct. 6, 2003 – We've all heard stories of crazy lawsuits, now in the midst of California's recall madness, a nonprofit group is holding an online election to recall the worst lawsuit in recent years. Central California Citizens Against Lawsuit Abuse (CCCALA) has compiled a list of seven lawsuit "candidates" that deserve to be recalled. We've set up a special web site: <http://www.recalllawsuits.com>, where visitors vote for the lawsuit they believe to be the most outrageous.

"All of these lawsuits should be fired", says Diann Rogers, CCCALA executive director. "They wasted the court's time, cost taxpayers money, and delayed justice for people with legitimate claims. Our lawsuit recall election may result in a winner, but it only proves that when people abuse our legal system, all of us lose.

CCALA's lawsuit recall candidates are:

Candidate #1: Hitting the Jack-Potty

A New York man won a \$3 million jury verdict because he hurt his thumb trying to exit the restroom of a Manhattan building where he works. The stall in question apparently had a missing doorknob. Makara reached his hand through a hole where the knob should have been and puled the door toward him just as someone entering the bathroom pushed the door in. The lawsuit claimed the injury caused the man to miss six months of work as a city claims examiner.

-- *New York Daily News*, 5/21/03

Candidate #2: Shake It Up!

A Florida woman, who was taken off an airplane in Dallas and asked to pull a vibrating sex toy out of one of her checked bags, has sued Delta Airlines citing public humiliation. She claims she had to hold it up for visible viewing. She was then allowed to repack and return to her seat for the flight back to Florida.

-- *The Dallas Morning News*, 7/28/02

Candidate #3: \$100,000 Pop-Tart

A couple in New Jersey sued the Kellogg Co. as well as appliance maker Black & Decker Corp. for \$100,000 in damages, alleging that a cherry Pop-Tart they put in their toaster blew up and burned down their house. The couple admitted to leaving their house while the pop tart was heating up, despite the warning label on the box advising against leaving food unattended in the toaster.

-- *Reuters*, 7/30/01

Candidate #4: You Snooze You Get Sued

Harvey Taylor, a convicted sex offender, has threatened to sue detectives of the Penobscot County (Maine) Sheriff's office because he lost two toes to frostbite while trying to escape in the Maine woods. Taylor had escaped from a county Sheriff, hid in the woods in northern Maine for three nights, and has threatened to sue the Sheriff because they were too slow in finding him.

-- *Bangor Daily News*, 2/27/02

Candidate #5: Scared of the Dark

A Philadelphia man sued U.S. airways for negligence, claiming he thought the plane he was on had crashed and he was dead after the crew left him asleep on the aircraft. "It was really dark and he didn't know if he was alive or dead".

-- *The Birmingham News*, 10/4/01

Continued on page 7

'Lawsuit Recall'

Continued from page 6

Candidate #6: Chubby Cherubs

Three teenagers in New York City filed a class-action lawsuit against McDonald's Corp., saying the fast food chain's food caused them to gain as much as 200 pounds and develop serious health problems related to being overweight.

-- *Los Angeles Times, 7/8/03*

Candidate #7: Dog Psychology

Boomer, the dog, filed suit against an invisible fence company for \$25,000 for psychological damage he suffered after he ran through the fence on his owner's property.

-- *Associated Press, 5/11/01*

Rogers stated that CALA would announce the results of the weekend during its observance of Lawsuit Abuse Awareness Week, which is recognized nationally from October 6-10.

So what happens to the "winner"?

"What we really need is the ability to go back in time and stop the lawsuit from happening, like a reverse kind of 'Minority Report'", Rogers said. "At best, calling attention to these kinds of abuses will serve as an example, and people will think twice before using our legal system for greed instead of justice."

CALA is a non-profit, grass roots, public education organization dedicated to serving as a watchdog over the legal system and those who would seek to abuse it for undeserved gain. Nearly 5,000 citizens and taxpayers are Central California CALA supporters. Contact Citizens Against Lawsuit Abuse Diann Rogers, 916-638-8995 or 916-212-8995 (Cell) www.StopBadLawsuits.com

California Trio Pleads Guilty to Auto Fraud Scheme

October 14, 2003

Three men pleaded guilty to multiple felony counts on September 10 involving an automobile insurance fraud scam that was exposed during a three-year joint investigation by CDI, California Highway Patrol, National Insurance Crime Bureau, Franchise Tax Board and the California State Bar.

Turhan John Dominic Folsie, 56, Michael Luther, DDS, 61, and Milton Ware, 59, were charged in relation to the investigation. Folsie, of Marina Del Rey, reportedly acted as an attorney, settling automobile insurance claims. He is not licensed with the California State Bar. Investigators said Folsie admitted committing automobile insurance fraud for over 18 years and to falsifying information with the aid of Luther. In the investigation, the medical reports prepared by Luther in all of the claims were virtually identical. Ware was a claimant in one of the claims and allegedly fraudulently assisted Folsie in settling his claim. Folsie pleaded guilty to three felony counts of insurance fraud, two felony counts of identity theft, one felony count of grand theft, and two felony counts of failing to file taxes with the Franchise Tax Board. He was sentenced to 479 days in the county jail, \$200 in restitution, three years of formal probation and the forfeiture of approximately \$567,000.

Luther and Ware pleaded guilty to one felony count of insurance fraud each. Luther was sentenced to three years formal probation and restitution of \$200. Ware was sentenced to time served, three years formal probation and restitution of \$200. The Los Angeles District Attorney's Office prosecuted the case.

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