

DECEMBER 2003

Re-Certification Seminars Scheduled

The Fair Claims Settlement Practices Regulations require that every adjuster be certified by September 1st of each year. Because many of the clients of our members want this re-certification early in the year, the CAIIA holds its re-certification seminars in February.

This year the seminars are being held around the state during the week of February 23rd. The application for the seminars will be in the January and February Issues of the Status Report. Also, once the form is ready, you may check on line at www.caiia.org.

If you have questions about the seminars, you may contact Peter Schifrin at 818-909-9090 or by e-mail at pschifrin@sgdinc.com.

News of Members

Dick Brown Retires

Long time member, Dick Brown, of R.A. Brown, announced that he is closing his business. His office was located in Blythe, California. He became a member of the CAIIA in 1992. His daughter worked with him until recently out of Lake Havasu City, Arizona.

Unfortunately, Dick has had a few health problems of late. He is recovering from a heart attack. The insurance industry has been well served in the Mojave Dessert area by having Dick there. His services will be missed. The CAIIA wishes him well and good health.

A note from Dick: As of 5:00 p.m., October 31, 2003, R.A. Brown will no longer be in business and I will be off-line.

I thank you for the support, the fellowship, and your prayers during my illness and friendships that have been formed over the past many years. Affiliated Adjusters and its members have made the job easier and more palatable over the past years. I wish you all well in the future.

My personal address will remain P.O. Box 396, Blythe, CA 92226 and my new phone number will be 760-922-7126 as of 11/6/03.

Hooray!!!!!! R.A.

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**California Association of
 Independent Insurance Adjusters**



*An Employer
 Organization of
 Independent
 Insurance Adjusters*

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■ **PRESIDENT'S MESSAGE**

How well do you know the California Association of Independent Insurance Adjusters? If you thought you knew us a few years ago, you might be surprised at the makeup of our membership today. This came through to me loud and clear a few weeks ago, in a conversation with a long time adjuster, who told me his perception is that we are a "bunch of California good old boys"! That couldn't be further from the truth – let me tell you a little about our membership today.

We are diverse. We have eight member firms owned and/or managed by women. Owners of CAIIA member firms are also Asian, Hispanic and African American.

We are small businesses. Although we do have a few member firms that are large corporations, some operating in several states, almost 70% of our members have one office location.

We are volunteers – we haven't had a paid staff for three years. All functions of the CAIIA are handled by volunteers, including this *Status Report*, the Fair Claims Practices Act Re-certification Seminars, the CAIIA website, the Directory, and all of the various committees you see on the back cover of this newsletter. Many, many hours of volunteer labor go into the running of this organization.

We are experienced. Our membership includes some of the most professional and experienced adjusters in this country today! Our logo tells it all, "There is no substitute for experience".

We are ethical. Our ten-point code of ethics sets a high standard for all to follow, and speaks of fairness, integrity, economy of expense, and respect for all persons with whom we have dealings.

We are educational. Our annual All Industry Day Seminar and our Re-certification Seminars around the state have a high reputation in the industry, and deservedly so. The Status Report provides educational information to our entire mailing list each month.

We are everywhere! Our 136 claims adjusting offices cover the state of Cali-



fornia from top to bottom, Arizona, Nevada, Hawaii, Oregon, Washington and even Florida.

We are easy to find – check out our Membership Directory (e-mail me if your need one) and our website, www.caiaa.org. A new Directory is in the works, and it should be available in late December or early January.

We are growing. We have nearly twenty new firms in the last three years.

I want to take a moment to say thanks, and farewell, to longtime CAIIA member R.A. "Dick" Brown, of R.A. Brown Adjusting Company, in Blythe, who has just announced his retirement. All who know Dick wish him well.

Thanks also to Richard Caulfield, of Caulfield, Davies & Donahue, of Sacramento, who has agreed to be CAIIA Counsel for 2003/2004. His position is also "voluntary", so we sincerely appreciate his time and effort in the next year. I have been working with Rich as defense counsel for about twenty years, so he is well known to us!

Finally, Happy Holidays to all – I hope your season is full of family, friends and food!

LEE COLLINS, ARM

President - CAIIA 2003-2004

■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Uninsured Motorist Coverage – Altercation

California Automobile Insurance Company v. Eva Hogan, Court of Appeal, Second District, (October 29, 2003)

In order to trigger uninsured motorist coverage, the insured's injuries must arise out of the use of an uninsured automobile. In this case, that was the issue where the insured became involved in an altercation with an uninsured motorist while exchanging information following a traffic accident.

John Hogan was involved in a minor automobile accident with a motorcycle driven by an uninsured motorist. Mr. Hogan got out of his car and approached the motorcyclist. While involved in the exchange of information, the uninsured motorist became enraged and punched Hogan in the face, knocking him to the ground, where he hit the back of his head on the pavement. He later died.

California Automobile Insurance Company (CAIC) insured Hogan with automobile liability insurance, including uninsured motorist coverage. Mrs. Hogan made claim for uninsured motorist benefits and was denied. CAIC filed a declaratory relief action, and Mrs. Hogan filed a cross-complaint for breach of contract, breach of the implied covenant of good faith and fair dealing and negligence. The trial court granted the CAIC motion for summary judgment. Mrs. Hogan appealed.

The Court of Appeal affirmed. Uninsured motorist coverage is triggered by an accident arising out of the use of an uninsured motor vehicle. The Court stated that in deciding whether the injury arose out of the use of an uninsured motor vehicle, the "but for" causation test should not be applied. Instead, the Court stated the predominating cause/substantial factor test has been applied by the majority of California decisions that have considered the issue. The Court stated any other decision would mean that the mere fact that a vehicle was present at the site of the injury or was used to transport someone to the scene of an injury would establish coverage. This is not the approach that has been followed by California cases.

After a review of prior California cases, the Court stated that in those cases where coverage was denied, the injuries did not arise from the use or operation of the vehicle. Rather, the vehicle was merely used as transportation of the tortfeasor to the site where the injury occurred and was merely incidental to the direct cause of the injuries. Similarly, in this case, Mr. Hogan's death was the result of the punch he received from the uninsured motorist. The uninsured vehicle was merely a means to transport the uninsured motorist to the site of the injury. In this case, the intervening act of the uninsured motorist broke the chain of causation between the use of the uninsured motor vehicle and the injury.

Mrs. Hogan argued that because motorists are required to stop and exchange information after an accident, this established a minimal causal connection between use of the uninsured vehicle and the injury. However, the Court stated stopping to exchange information was not a cause of the injury.

Finally, the Court noted that cases from other jurisdictions were consistent with the holding of this case. The Court also noted public policy did not support a finding of coverage. In this case, the injury was caused by a criminal assault. Public policy did not support a finding of coverage under an uninsured motorist policy for such an act. The Court therefore affirmed the judgment in favor of CAIC.

Comment: This decision is consistent with recent decisions involving altercations that occur following a motor vehicle accident. Automobile policies are generally found not to provide coverage for such events.

Continued on page 4

■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Continued from page 3

Coverage – ADA Claims

Modern Development Company vs. Navigators Insurance Company, Court of Appeal, Second District, (July 31, 2003).

This is the first published decision concerning coverage for claims under the Americans With Disabilities Act. The claim involved a lawsuit brought by a disabled man for physical and emotional damages resulting from the alleged failure to comply with the ADA and similar California acts.

Modern Development Company (Modern) owned and operated the Paramount Swap Meet. This was an open-air marketplace operated at the site of a former drive-in movie theater. Navigators Insurance Company insured the business under a commercial general liability policy.

Juan Moreno filed a complaint against Modern for violation of the ADA and related statutes claiming that he was denied full and equal access as a person with physical disabilities to the facility because the public restroom facilities were configured in a way that were inaccessible to Mr. Moreno in his wheelchair. He alleged he suffered humiliation, embarrassment, frustration and serious emotional and physical injuries. Modern tendered the complaint to Navigators. Navigators declined to defend or indemnify. Modern settled the claim and then sued Navigator for breach of contract and breach of the covenant of good faith and fair dealing. On cross-motions for summary judgment, the trial court granted summary judgment for Navigators. Modern appealed.

The Court of Appeal affirmed. The Court noted no published California opinion concerning this particular situation. It did find one federal case and several unpublished opinions that generally found no coverage. The Court concluded Navigators did not owe a duty to defend because the allegations did not allege an accidental, unforeseen occurrence sufficient to trigger Navigators' duty to defend. Here, it was alleged that the swap meet failed to comply with various anti-discrimination laws relating to the disabled and that because of the resulting lack of access, the plaintiff had been injured. These events did not constitute an accident or occurrence defined by the policy. The alleged injuries were caused by the architectural configuration of the swap meet and Modern's alleged failure to remove the architectural barrier. The swap meet intended for the bathrooms to be configured as they were. That was not an accident, which the policy defined as an unintentional, unexpected chance occurrence. Because there was no occurrence, there was not duty to defend. The judgment of the trial court for Navigators was thus affirmed.

Comment: If you obtain a copy of the original opinion, it contains a footnote listing all of the unpublished opinions, which have discussed this issue. The final published decision deletes this footnote.

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■ HRB Insurance Law Update

Submitted by Hancock, Rothert & Bunshoft, LLP

Amex Assurance Co. v. Allstate Insurance Co., California Court of Appeal, Second District, Division Six, Case No. B162493, filed October 28, 2003

The Court of Appeal held that the “professional services” exclusion in a homeowners insurance policy applied to exclude liability arising from the insured’s plumbing work on a third party’s residence regardless of whether the insured was compensated for this plumbing services.

The insurance policy at issue contained the following exclusion; “we do not cover bodily injury or property damage arising out of the rendering of or failure to render professional services by an insured person”. It was undisputed that the insured was a journeyman plumber. The insured’s assignee argued that the “professional services” exclusion did not apply to plumbing work done by the insured on the grounds that plumbing is a craft or trade, not a profession, and on the grounds that the insured was not paid for his services. The Court of Appeal rejected both of these arguments, finding that the ordinary meaning of the word “professional” includes skilled services, such a plumbing. The court also held that it is the type of activity, not the actual compensation that controls whether the exclusion applies.

■ CAIA Calendar

■ CAIA Re-Certification Seminars

Week of February 23, 2004

Check future *Status Reports* for locations

■ 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: Doug Jackson, 805-584-3494

CARFAX Sends Out Alert on Auto Fraud Scam

November 14, 2003

CARFAX, a provider of the vehicle history report, is warning consumers about a type of automobile fraud that reportedly involves both a stolen vehicle and a stolen identity – a vehicle's identity, that is. The scam, called "VIN Cloning", involves using a vehicle identification number (VIN) from one vehicle to mask the true identity of the stolen vehicle. These stolen vehicles then end up in the hands of unsuspecting consumers.

Statistics just released by the FBI in their 2002 Uniform Crime Report indicate that last year was the third consecutive year that the vehicle theft rate increased. The agency's "Crime Clock" reveals that, based on those numbers, a vehicle is stolen every 25.3 seconds in the U. S. This translates into an estimated 1.2-million vehicles stolen with an approximate value of \$8.4 billion.

According to the National Insurance Crime Bureau, the 10 most commonly stolen vehicles are: 1. Toyota Camry, 6. Chevrolet Full Size C/K Pickup, 2. Honda Accord, 7. Toyota Corolla, 3. Honda Civic, 8. Ford Taurus, 4. Oldsmobile Cutlass Supreme/Ciera, 9. Chevrolet Caprice, 5. Jeep Cherokee/Grand Cherokee & 10. Ford F-150 Pick-up.

According to CARFAX (www.carfax.com), there are steps used car shoppers can take to avoid "cloned" vehicles. Scott Fredericks, vice president of CARFAX, recommended that consumers start by checking the VIN on the vehicle's dashboard against the title documents.

"You should also match that number in other places on the vehicle including under the hood and the door jamb on the driver's side", said Fredericks. "Make sure it matches in all three spots."

California Couple Charged with Fraud

October 21, 2003

Criminal charges of insurance fraud have been filed against Cory and Tiffany Thurlow of Modesto, California, by the District Attorneys' Office of Stanislaus County. They are charged with two felony counts and a misdemeanor.

These charges arise from an insurance claim the Thurlows made against their insurance carrier, Workmen's Auto Insurance of Los Angeles, California, for an alleged theft of property from their house on May 27, 2003.

The Thurlows allegedly claimed that approximately \$60,000 worth of household items were stolen by burglars. Due to the suspicious nature of the claim, Workmen's Auto referred the case to claims investigation firm David Morse & Associates. Subsequent investigation revealed numerous inconsistencies and misrepresentations, and the matter was referred to the Stanislaus County District Attorneys' Office. Further investigation by the District Attorney investigators produced evidence to indicate that the Thurlows had hidden the allegedly stolen belongings in a storage facility.

Martin D. McDermott, III, vice president, Claims for Workmen's Auto Insurance, said, "The first step to improve the odds in the battle against fraud is our front line claims professionals. Adjusters can't ignore those 'red flags'. If SIU gets the case for investigation early in the claims process, the odds to uncover insurance fraud are now in our favor. The hopes and dreams of many claims professionals in the fight against fraud have been lost. We need to accept the challenges of fraud in our industry so we can feel the exhilaration of victory and keep the cost of insurance affordable for everyone."

Microsoft vs. General Motors

For all of us who feel only the deepest love and affection for the way computers have enhanced our lives, read on. At a recent computer expo (COMDEX), Bill Gates reportedly compared the computer industry with the auto industry and states, "If GM had kept up with technology like the computer industry had, we would all be driving \$25.00 cars that got 1,000 miles to the gallon."

In response to Bill's comments, General Motors issued a press release stating:

If GM had developed technology like Microsoft, we would all be driving cars with the following characteristics:

1. For no reason whatsoever, your car would crash twice a day.
2. Every time they repainted the lines in the road, you would have to buy a new car.
3. Occasionally your car would die on the freeway for no reason. You would have to pull over to the side of the road, close all of the windows, shut off the car, restart it, and reopen the windows before you could continue. For some reason you would simply accept this.
4. Occasionally, executing a maneuver such as a left turn would cause your car to shut down and refuse to restart, in which case you would have to reinstall the engine.
5. Macintosh would make a car that was powered by the sun, was reliable, five times as fast and twice as easy to drive – but would run on only five percent of the roads.
6. The oil, water temperature, and alternator warning lights would all be replaced by a single "This Car Has Performed An Illegal Operation" warning light.
7. The airbag system would ask "Are you sure?" before deploying.
8. Occasionally, for no reason whatsoever, your car would lock you out and refuse to let you in until you simultaneously lifted the door handle, turned the key and grabbed hold of the radio antenna.
9. Every time a new car was introduced car buyers would have to learn how to drive all over again because none of the controls would operate in the same manner as the old car.
10. You'd have to press the "Start" button to turn the engine off.

Norwood's Annual Report

Each year our legislative analysis compiles a fairly lengthy review of the actions in Sacramento, which affect the insurance industry. This year the report is available on line at www.CAIIA.org for your review.

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