CAIIA Status Report

JANUARY 2004

Insurance Fraud SIU Multi-Agency Conference

Submitted by Peter Schifrin, Schifrin, Gagnon and Dickey, Van Nuys, CA

In Berkeley on November 17th I attended the first-ever Insurance Fraud SIU Multi-Agency Conference presented by the California District Attorneys Association. The purpose of the conference was to provide education and foster cooperation between district attorneys, law enforcement, the Department of Insurance and insurance company SIU departments.
The keynote address was given by Dale Banda, Chief, Fraud Division of the California DOI.
Chief Banda spoke of the mission of the DOI Fraud Division, "To protect the public from economic loss and distress by actively investigating and arresting those who commit insurance fraud and to reduce the overall incidence of insurance fraud through anti-fraud outreach to the public, private and governmental sectors."
Chief Banda also discussed the four priorities of Commissioner Garamendi: homeowners insurance; privacy; healthcare; and workers compensation. In discussing workers compensation he indicated that there are 24 workers compensation carriers currently in receivership. He stated that workers compensation insurance in California is a $28 billion dollar industry. The total insurance market in California is an $88 billion dollar industry.
Chief Banda discussed the recently enacted SIU regulation that place what many feel are overly burdensome training requirements upon insurers. He advised that the final regulations are being completed and that he expects them to be "softened".
Craig Pusser from the CSAA, John Standish from the DOI Fraud Division and Eric vonGeldern from the Alameda County District Attorney's office spoke about inter-agency cooperation. It was clear from their presentation and audience questions that the California DOI and the district attorneys throughout California continue to have limited resources to investigate and prosecute insurance fraud.
2000 to 3000 suspected fraudulent claims are reported monthly with only a very small percentage being investigated. There are approximately 200 fraud investigators in the California DOI.
The prosecutors in the audience indicated that the best fraud cases for them are those that can be easily explained to a jury. Mr. Standish related that his office is far more likely to take on a case if the initial presentation

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An Employer Organization of Independent Insurance Adjusters

Inside This Issue

CAIIA Newsletter
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■ PRESIDENT'S MESSAGE

As I write this, Christmas is just around the corner. By the time you read this, New Year's Day will probably have come and gone. The Holiday Season is an exciting and busy time, and the same holds true of this association and the volunteers who are working behind the scenes to continue the high standards of the CAIIA.

The 2004 Directory is now at the printer, and copies should be in the mail in January. Our goal is 100% accuracy in the listing of member firms, down to the last zip code, so if you notice any corrections or changes that need to be made, please contact me directly. The time lag between membership renewals, and the production of the Directory adds a challenge to the already time consuming task of proofreading each P.O. Box, fax number, and e-mail address, etc.!

The Directory will have a new look this year for the first time in many, many years. The cover will be glossy, with a spiral binding, which will include a comb cover, with our name printed on the spine. If you are receiving this newsletter, you should also receive the new Directory this month.

Peter Schifrin has done a wonderful job of spearheading a committee, which has assembled instructors and locations for our annual Re-certification Seminars around the state in February 2004. The CAIIA can rightly be proud of this yearly educational effort, which serves our membership and the Insurance Claims community so well each year. Specific dates, locations, and registration information can be found elsewhere in this newsletter.

Chairs have been named for all of the 2004 CAIIA Committees, as listed on the back cover of the Status Report. If you have any questions or concerns in any area covered by one of these committees, please contact the Chair directly.

Steve Wakefield will be taking a fresh look at our bylaws, which need to be updated given our all volunteer status, and some changes in current practice from the time some of the provisions were originally written.

As we have noted before, those who prefer to receive this newsletter via e-mail should notify Sterrett at his e-mail address listed.

Our mid term conference this year, on March 24-25, 2004, will immediately follow the Combined Claims Conference on March 23-24, 2004. We are holding the mid-term at the Marriott Newport Beach and Tennis Club. We invite all members to come to this beautiful facility. Room rates are surprisingly low, and we pledge to keep the conference registration fee as low as possible. Registration forms for the conference will be printed in the February and March issues of the Status Report, and will, also be available from our website by late January.

Doug Jackson is working already on the Annual Convention, to be held at the Sheraton Universal next October. Our All Industry Day is one of the educational highlights of our entire year.

All of these volunteers deserve our thanks, as we enter this next year, our 57th. I wish each and every one of you a very Happy New Year, and success with all your New Year's resolutions and goals!

LEE COLLINS, ARM
President - CAIIA 2003-2004

Insurance Fraud Conference

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(typically correspondence from a claims adjuster and/or SIU department personnel) is well documented and clear.

Insurance adjusters were encouraged to submit Suspected Fraudulent Claim forms (FD-1) (go to www.caiia.org and click on the link which takes you to the California Department of Insurance website to obtain a copy of this form) whenever they felt a reasonable suspicion or inkling that insurance fraud was being committed. The DOI is beginning to accept electronic submissions of FD-1's from authorized entities, including TPA's.

Michael Stahl, D.C. spoke of recent fraud trends in the area of chiropractic medicine. It was his view that the new workers compensation regulations that are meant to crack down on chiropractic abuses will be of no benefit. He believes that chiropractors will continue to find new ways to cheat insurers. It was stated that chiropractors represent the largest medical expense in California. Dr. Stahl spoke of various fraudulent schemes including; charging for patients never seen or not seen as often as claimed; and charging for a higher level of service than rendered (up coding).

He indicated that one of the new schemes being seen is "manipulation under anesthesia" (MUA). In this instance, patients receive three consecutive days of manipulation at a surgical center while under anesthesia at a cost of upwards of $50,000. The insurer receives bills from the surgical center, "surgeons", and anesthesiologist. Coverage for this type of treatment is not currently limited by workers compensation or healthcare policies. I for one would run if told that my chiropractor wanted to put me to sleep.

The last speakers were Judge Larry Goodman and public defender Pauline Weaver from Alameda County. They provided an overview of the criminal justice system and discussed the impact of insurance fraud in California. It is clear that the over 500 attendees mean well and hope to stamp out insurance fraud, as I am sure many of you do. Yet, insurance fraud definitely remains a hugely expensive enterprise that will not be going away any time soon.

FOR LITIGATION PURPOSES, WHO IS THE TRUCKING COMPANY?

Terry E. Morgan, CTL

Submitted by DJS Associates, Inc., Abington, PA

Though the Interstate Commerce Commission (ICC) came into being in 1887, trucking was not regulated until 1935. Though the ICC has been terminated for a few years now, many of their responsibilities remain either with the Federal Motor Carrier Safety Administration (FMSCA) or the Surface Transportation Board (STB). Both are agencies within the U.S. Department of Transportation (USDOT). Almost from the beginning, it was recognized that truckers needed to supplement their fleets with equipment and drivers which, they owned or employed, in order to balance the peaks and valleys of their business and equipment needs. This wide use of owner/operators and contracted equipment presented challenges to litigation involving trucks. It is common for a trucking company to try to shift liability to the actual owner and operator of the commercial motor vehicle when the unforeseen happens.

That shifting of responsibility is largely a smoke screen. Included in the regulations that have survived the many changes in the trucking industry, are regulations addressing the issue of leasing of equipment with drivers for both short periods and for extended periods of time. Without going into every detail of the leasing regulations, the most important elements involved with most litigation is the lessee has the exclusive use, possession and control of the leased equipment. Additionally, the lessee must maintain financial responsibility to the public (insurance). The lease agreement may contain provisions requiring the lessor to provide certain insurances or requiring them to pay for the insurance the lessee provides. The lessee is, in all but rare exceptions, responsible for the operations of the truck. Provisions (contained in a lease agreement) do not relieve the lessee from the primary responsibility to the public for the safe operation of the leased vehicles and drivers. Owner/operators and leased drivers operating leased fleets are, for purposes of the regulations, statutory employees and the lessee must train them, qualify them and monitor their compliance with the regulations as if they were employees. Vehicles leased with drivers must be maintained and inspected by the lessee in compliance with the regulations also.

Whether a lease agreement is written or oral, the lease, in most cases, is binding on the carrier contracting to transport the shipment(s). The insurance filings that must be made with the FMCSA, or are required by the U.S.DOT, only state that the insurance company is insuring the motor carrier and does not identify any specific trucks, number of trucks being operated, nor whether the trucks are owned or leased.

In many cases, owner/operators are used just for a specific shipment, group of shipments or for a limited period of time. In the industry, these agreements are known as a trip lease. Whether the vehicle is operating on an on-going lease, trip lease or an oral lease, the motor carrier's responsibility to the public remains unchanged. If an accident occurs when the truck is loaded or empty, but a lease is in effect, had been in effect, or is going to be in effect, the lessee remains responsible for the commercial motor vehicles being operated in furtherance of their business interests.

HRB Insurance Law Update

Submitted by Hancock, Rothert & Bunshoft, LLP

This week we report on three recent cases.

Garamendi v. Golden Eagle Insurance Company, California Court of Appeal, First Appellate District, Division Three, Case No. A097435, filed November 25, 2003.

The Court of Appeal ruled that an insurer that agreed to defend its insured and did not reserve its rights and then withdrew its defense without notifying the insured was estopped from denying coverage under its policies because the insured relied to its detriment on its understanding that the insurer was "handling the matter".

The Court of Appeal found that Golden Eagle was estopped to deny coverage because it unqualifiedly accepted the defense of the claim for damages, on which the insured relied to its detriment. In reaching its decision, the court relied on the fact that the insured testified that Golden Eagle never advised him that it could not continue to defend him unless he paid his corporate taxes and that he was never informed that the case was going to trial or that the company's corporate suspension would prevent defense of the action. He also testified that he did not learn that the matter had gone to trial until after judgment had been entered. The court found that due to the fact that the insured believed that the defense of the action was occurring and was never informed otherwise and did not know that failure to pay approximately $1,600 in franchise taxes could ultimately expose the company to well over a million dollars in damages, Golden Eagle was estopped from denying coverage.

The Court of Appeal also ruled on separate issues relating to whether the underlying judgment was not a default judgment and thus Insurance Code section 1028 did not preclude the claims administrator from considering the underlying judgment as evidence of Golden Eagle's liability in liquidation proceedings.

Mercury Casualty Company v. Malone, California Court of Appeal, Fourth Appellate District, Division One, Case No. D040282, filed November 25, 2003.

The Court of Appeal held that the third party beneficiary to an insurance contract is bound by the terms and conditions of the contract.

In this case, an automobile passenger was injured in an accident and received payment of medical bills under the medical payment provision of the automobile liability policy covering the driver of the car. The issue presented was whether the passenger as obligated to reimburse the insurer, as required under the policy, for the amount of such payments from proceeds she received in settling her claims against another driver legally responsible for the accident. The Court of Appeal concluded that the passenger, as a third party beneficiary of the insurance policy, was required to comply with the conditions set forth in the insurance policy. In reaching its decision, the court relied on Syufy Enterprises v. City of Oakland, 104 Cal.App.4th 869, 888 (2002).

Simon v. San Paolo U.S. Holding Company, Inc., California Court of Appeal, Second Appellate District, Division Four, Case No. B121917, filed December 2, 2003.

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HRB Insurance Law Update

Submitted by Hancock, Rothert & Bunshoft, LLP

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The Court of Appeal upheld $1.7 million in punitive damages in a real estate fraud case, despite only $5,000 in compensatory damages, finding that the U.S. Supreme Court's recent ruling in State Farm Mutual Automobile Insurance Co. v. Campbell does not prevent state courts from issuing punitive damages awards they find fair.

In this case, the plaintiff was awarded $5,000 in compensatory damages (his out of pocket expenses) in a real estate fraud action but the trial court record demonstrated that the plaintiff had actually suffered $400,000 in damages for lost profits and lost opportunity. In light of this, the court found that the punitive damages award was appropriate and noted that there was really only a 4 to 1 ratio between the punitive damages award and the damages suffered by the plaintiff. The Court of Appeal said, "State Farm was not intended to dispossess the states of their discretion over the imposition of punitive damages . . . And we do not construe State Farm's suggested ratios as limiting the reviewing court to a comparison of punitive damages to an award of out-of-pocket expenses that does not reflect the full effect of the defendant's conduct upon the plaintiff."

The court went on to hold that the punitive damage award was appropriate given the reprehensible nature of the defendant's conduct and the fact that a punitive damage award should not be so small that it can be "simply written off as part of doing business".

CAIIA *Calendar*

CAIIA Re-Certification Seminars

Week of February 23, 2004
Check this *Status Report* for locations and dates

Combined Claims Conference (CCC)

March 23-24, 2004
Pacific Palms Conference Center, Industry Hills, CA
Contact: Brenda Reisimger, 888-811-6933

CAIIA 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

Did You Ever Wonder . . . ?

• When you go to Court does it make you feel any better knowing that you are entrusting your fate to 12 people whom weren't smart enough to get out of jury duty?
• Why aren't lawyers sworn in during trial?
• Isn't an argument just a situation where two people try to get in the last word first?
• Isn't it true that a woman always has the last word in any argument? Anything a man says after that is the beginning of a new argument, isn't it?
• When you come across a sign that says "Speed Limit Strictly Enforced", does that mean that in some places the speed limit isn't so strictly enforced?
• Why is it that anyone driving slower than you is an idiot, yet anyone going faster than you is a maniac?
• Is a gynecologist simply a doctor who was too short to be a brain surgeon?
• Isn't a bartender just a pharmacist with a limited inventory?
• Did you ever notice when sitting at a red light and the person in front of you pulls up a couple of inches you are compelled to move up too? Do we really think we are making progress toward our destination? "Whew I thought we'd be late but now that I am 9 inches closer I can stop for coffee and a danish!"

BUMPER CARS

Michael Kleinberger, Ph.D, Biomechanical Engineer
Submitted by DJS Associates, Inc., Abington, PA

What is the bumper rating for a vehicle?
The federal standard (CFR 49 Part 581) specified the protective requirements for a bumper system. This standard currently requires a bumper system to protect the vehicle body from damage, including damage to the lights and reflectors, for a variety of impact conditions up to 2.5 mph. Most vehicle bumper systems, however, are designed to fulfill the previous requirement for impact speeds up to 5.0 mph. The bumper rating for any particular passenger vehicle (typically 5.0 mph) will indicate the impact speed at which the bumper system has been certified. This information is readily available through one of the several existing vehicle information systems.

How can the bumper rating be used?
The bumper rating of a vehicle becomes an important factor in assessing the likelihood of occupant injury because it can be used as a lower boundary for estimating the vehicle's change of velocity. For example, in a collision in which the bumper (maybe including a broken taillight), the vehicle's velocity change would generally be greater than the bumper rating. It is important to recognize that the bumper rating (and bumper standard) specifies a minimum velocity change for which the bumper system must protect against damage.

What if there is no visible damage on the vehicle?
The unfortunate reality of crash reconstruction is that the vehicles are often not available for inspection. This requires experts to sometimes base their estimates of the vehicle's velocity change solely on photographic evidence, which can at times be misleading. Many vehicles are equipped with bumper systems with isolators and/or foam filled molded bumpers that can return to their original shape after an impact. The absence of visible damage on a photograph should not be interpreted to mean that the impact speed was extremely low. If the vehicles are available, the isolators should be inspected for evidence of displacement and the crushable foam inside the bumper should be examined for evidence of energy absorption. This is the most accurate method of estimating the vehicle's velocity change.

CAIIA Certification Seminars
Fair Claims Practices Regulations
Seminar Schedule - 2004

The California Association of Independent Insurance Adjusters have scheduled their annual Certification and Re-Certification Seminars on the **California Fair Claims Practices Regulations. All industry personnel are welcome to attend.**

The California Department of Insurance requires that all personnel handling claims be certified on an annual basis that they are knowledgeable in the regulations.

This is the 12th year that the CAIIA has offered this valuable service.

It is necessary for those registering for re-certification to **submit a copy of their current certificate**, along with their registration form. **If you can not produce a current certificate, you must register for full certification.** Your certification need not be a CAIIA certificate.

You **must bring a copy of the 1997 regulations with you** to the seminar. You can purchase a copy of the regulations for an additional $15.00 over and above your registration fee.

Due to expenses in preparation for these seminars, **the CAIIA will not refund any registration fee.**

Notice: Full certification will be conduced only at four locations, Oakland, Anaheim, San Diego, and Fresno. The other locations listed will handle re-certification only. Applicants for full certification need not register until 10:00 a.m.

Register now for the seminar you wish to attend. Be sure and mark the appropriate city in the box to the right.

Complete a form for each person.

Name_____

Co._____

Address_____

City_____Zip_____Tel_____

Fees (circle one):	Re-cert	Full cert
CAIIA Member Fee	$35.00	$55.00
Non-Member Fee	$50.00	$80.00
Copy of Regulations	$15.00	INC.
Amount Enclosed	$_____	

Make checks payable to CAIIA, mail registration, certificate, and payment to:

CAIIA – Peter Schifrin
Schifrin, Gagnon & Dickey, Inc.
P.O. Box 2726
Van Nuys, CA 91404

Questions? Call Peter Schifrin
(818) 909-9090 Ext. 13

SCHEDULE

Registration: 8:30 a.m. to 9:00 a.m.

Re-Certification: 9:00 a.m. to 10:00 a.m.

Full Certification: 10:00 a.m. to 12:30 p.m.

SEMINAR LOCATION AND DATES

_____**Tuesday, February 24, 2004**
Glendale: Carl Warren
500 N. Central Ave. 4th Fl.

_____**Tuesday, February 24, 2004**
Anaheim: Holiday Inn
1221 S. Harbor Boulevard

_____**Wednesday, February 25, 2004**
Redding: Swanson & Assoc. Conf. Rm.
375 Smile Place
Suite C

_____**Wednesday, February 25, 2004**
San Diego: King's Inn
1333 Hotel Circle South

_____**Thursday, February 26, 2004**
Sacramento: Heritage Hotel
1780 Tribute Road

_____**Friday, February 27, 2004**
Fresno: Ramada Inn
324 E. Shaw Avenue

_____**Friday, February 27, 2004**
Oakland: Executive Inn
1775 Embarcadero

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