



Status Report

JANUARY 2005

CAIIA Announces SEED Program

The CAIIA will be launching our SEED program (Seminar for the Evaluation of Earthquake Damage) training during the week of February 28 to March 4, 2005, which will address the training and certification required by CCR, Title 10, Chapter 5, Subchapter 7.5.1, Article 1, Section 2695.40 through Section 2695.45. Those regulations deal with Insurance Adjuster Training for Evaluating Earthquake Damage.

The CAIIA has 6 locations planned for our annual Fair Claims Settlement Practices Regulations Recertification during the first week of March. At 3 of the locations, we will be adding the SEED program for property adjusters who are involved with adjusting earthquake claims. All carriers should be aware that the CDI, under authority of Insurance Code Section 10089.3, will require "...training of insurance adjusters in evaluating damage caused by earthquakes and the procedures for reporting unaccredited adjusting". The initial reporting period begins January 1, 2005 and ends December 31, 2005. Insurers will be required, annually, to submit a list to the CDI within 30 days of the end of the reporting period as to any adjusters who have handled earthquake claims for them within the previous reporting period who have not been trained pursuant to Section 2695.42. The regulations require the insurer to annually list the name of each adjuster who have not received said training, their license number (if any), and claim number for each earthquake claim they handled. Adjusters handling earthquake claims are required to be recertified every 3 years.

If you are an insurer writing residential property coverages, be sure to have your property adjusters who will be handling earthquake claims trained before the next earthquake strikes! The CAIIA will be offering these classes on the same day as the Fair Claims recertification seminars. Part of the training required under 2695.42 is compliance with the FCSPPR. If you have already been recertified, you can come for just the SEED program. Otherwise, come earlier and get recertified. The total SEED program will be one day. The FCSPPR will be about one hour.

Complete information, including dates, times, locations, and costs, will be included in next month's Status Report and on our website, www.caiia.org.

PUBLISHED MONTHLY BY
**California Association of
Independent Insurance Adjusters**



An Employer
Organization of
Independent
Insurance Adjusters

■ Inside This Issue

CAIIA SEED Program	1
President's Message	2
Weekly Law Resume	3
Reduce Your Risk	4
CAIIA Calendar	4
Business Owner Sentenced	5
Licenses & Penalty Fees	5
Directory Updates Needed	6
Adjuster Killed in Tampa	6
CCC Registration Form	7
Exec. Off. Duty Dist.	Back Page

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

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■ **PRESIDENT'S MESSAGE**

As we enter a new year, I hope all of you had a wonderful holiday season and that everyone made it through without too much damage around the waistline. With each new year, we often start with a New Year's resolution. And that is a good thing because a new year is a new opportunity to do better, resolve old issues, and move forward with ideas that you have been meaning to do something about. It's easy to make a resolution. It's easy to make a promise. But, it's very easy not to fulfill those commitments. So, as we go into this new year, try hard to beat the odds and follow through with what you know is needed to be done. Make this the year that you leave your mark on the world by doing something good for yourself and those around you.

My hope is that I will leave the CAIAA better than I found it and that those who follow behind me leave it better than they found it. That is what makes a great organization, constantly trying to improve itself, never remaining static. My hope is that we will handle the business of the organization better, clean up the by-laws, create more opportunities for members, and provide more benefits for members.

Although the CAIAA already does much for its members, it also does great things for the insurance industry. Perhaps, the most important thing is education. Each year, the CAIAA offers various educational programs to the most important group in the insurance field, that is, to the claims adjusting professional, whether they are licensed independent insurance adjusters or insurance company staff adjusters. Beyond our All Industry Day education programs offered during our Annual Convention each October, we also offer annual Fair Claims Settlement Practices Recertification sessions throughout the State. This year, we are going one step further. At half the locations, we plan on offering our Seminar for Evaluating Earthquake Damages (SEED) (detailed further in this edition). With these and other programs, I am proud of the work done by our CAIAA members in addressing the needs and concerns of the insurance in-



dustry and the insuring public.

The CAIAA membership has a vast resource of claims adjusting experience and knowledge. Should any insurance company or legal firm have a need for an on-site education program, need expert testimony, or require consulting services, look no further than our printed Directory or our online listing of offices (www.caiaa.org), both of which list office specialties. The CAIAA continues to be a great resource for not only adjusting and investigation services, but a partner with our State representatives in working to improve and provide fair legislation and being a source to them, not only as to what the insurance claims adjuster and the claims industry needs, but also what we have to offer them in terms of knowledge and expertise as to what we as an industry do. If you are surprised at the fact the legislators don't all know what we do, don't be. It seems the industry would be better served if there were more communications to industry outsiders who generally have no idea who or what we do in the claims field.

DOUG JACKSON, RPA
President - CAIAA 2004-2005

■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Insurance – Priority of Coverage – Tractor and Leased Trailer Policies

Wilshire Insurance Co., Inc. v. Sentry Select Insurance Company, Court of Appeal, Fourth District, (November 15, 2004)
This case involves an interpretation of California Insurance Code section 11580.9 in determining whether tractor and leased trailer policies should provide primary or excess coverage following a motor vehicle accident.

In July 1999, Ken Holm, dba Kenway Enterprises, was driving a Kenworth tractor hauling a Great Dane semi-trailer. The tractor-trailer rig was involved in a serious accident in Southern California which caused bodily injury and death. A wrongful death action was filed in Orange County Superior Court against Kenway, as owner of the tractor, and Statewide Transportation, the owner of the trailer.

At the time of the accident, Wilshire Insurance Co. insured Kenway and Sentry Select Insurance Co. insured Statewide. During the course of litigation, Wilshire demanded that Sentry share in the costs of litigation and contribute to settlement. Sentry refused to do so. Kenway undertook the defense of both Kenway and Statewide, reserving its right to seek a pro rata contribution from Sentry. After expending over \$43,000 in attorneys fees and costs, Wilshire proceeded to settle the wrongful death action for \$210,000. Wilshire then filed a declaratory relief action and brought a motion for summary judgment seeking one-half the expense incurred by Wilshire in defending and settling the wrongful death case. Sentry, in turn filed its own motion for summary judgment arguing that it provided only excess coverage for the accident, and was under no obligation to make a contribution.

The trial court granted Wilshire's motion for summary judgment. On appeal, Fourth Appellate District affirmed the trial court. The Court noted that Kenway was hauling a load for Statewide under the terms of a written agreement. Pursuant to the agreement, Statewide leased the tractor from Kenway and hired a Kenway driver. In return, Kenway agreed to indemnify Statewide for all third party claims arising out of accidents.

To protect itself Kenway purchased the Wilshire policy with policy limits of \$1 million. Statewide also had its own motor vehicle policy from Sentry, which provided up to \$1 million in coverage for any driver hauling a Statewide trailer with Statewide's permission. Kenway's tractor was scheduled as an "owned" vehicle on the Wilshire policy, and Statewide's trailer was scheduled as an "owned" vehicle on the Sentry policy.

The Wilshire policy contained an "other insurance" clause stating that Wilshire's coverage would be primary where a covered vehicle (the tractor) was hired by another (Statewide) and Kenway was obligated by written agreement to hold harmless the lessee (Statewide). The Wilshire policy also set forth, however, that if a covered trailer were connected to a covered tractor, that coverage for both the trailer and the tractor would be primary.

The Sentry policy provided coverage for damages arising from

use of the trailer. However, under the Sentry policy's "other insurance" clause, where the covered trailer was connected to a tractor that was not covered under the Sentry policy, the Sentry coverage would be excess.

The trial court and the Court of Appeal both agreed that Insurance Code section 11580.9 applied to the facts of the case. Section 11580.9 was created by the California Legislature to deal with conflicts among insurers as to whether various policies are primary or excess. Under section 11580.9(d), "Where two or more policies affording valid and collectible liability insurance apply to the same motor vehicle or vehicles in an occurrence out of which a liability loss shall arise, it shall be conclusively presumed that the insurance afforded by the policy in which the motor vehicle is described or rated as an owned automobile shall be primary and the insurance afforded by any other policy or policies shall be excess."

The Court of Appeal found that both the Wilshire and Sentry policies afforded valid and collectible insurance. The Court further reasoned that California law is clear that a truck tractor hauling a trailer is treated as a single motor vehicle. Thus, insurance policies covering the tractor and the trailer respectively applied to the "same motor vehicle". In addition, as the parties stipulated in their motions, the tractor and the trailer were both described in the respective policies as "owned" vehicles. Therefore, each policy, pursuant to section 11580.9(d), was conclusively presumed to be primary. The Court held that each insurer had an equal obligation to contribute to the loss. Sentry argued that co-primary coverage is contrary to the public policy of determining an order of coverage. The Court of Appeal disagreed holding that there is nothing in the statute that prohibits an equal ranking of the policies. While Sentry had an equitable argument that its insured was not getting what it bargained for (excess coverage), the Legislature's conclusive presumption (contained in section 11580.9) regarding the priority of coverage must take precedence. Wilshire's summary judgment was therefore affirmed, and Sentry was ordered to pay one-half of Wilshire's costs and fees in resolving the underlying wrongful death action.

COMMENT

The Fourth Appellate district commented on the apparent inequity of the decision. Even though Sentry contracted with its insured to only provide excess coverage, it was ordered to pay for half of the loss. The court felt it was obligated, however, to follow the "bright line rule" set forth in section 11580.9.

Insurers and insureds dissatisfied with the operation of section 11580.9 can overcome the conclusive presumption by written agreement signed by all insurers who have issued policies for a loss and all named insureds. (Section 11580.9(f)). This process, however, is cumbersome. Insurers, such as Sentry, may also depend entirely on tractor owner coverage, by providing a "trucker's endorsement" which eliminates all coverage when the trailer is towed by another. Finally, insurers can lobby to have section 11580.9 re-written.

Reduce Your Risk: If It's Broke, Fix It If You Can

Submitted by Bradley & Gmelich, Lawyers – Glendale, California

Most of us are familiar with the often used expression, "If it ain't broke, don't fix it". The recent California court of Appeal decision in *Martinez v. Chippewa enterprises, Inc.* (2004) 121 Cal.App.4th 1179 reminds us that for landowners, the inverse also can be true – "If it's broke, fix it if you can".

In *Martinez*, the plaintiff and her brother were walking to an early morning appointment at an Immigration and Naturalization Service (INS) office situated in a building owned by Chippewa Enterprises. As they walked across a driveway into the building's parking lot, plaintiff slipped on wet pavement and fell. As a result of the fall, her shoulder was dislocated, and she hurt her back badly.

Plaintiff sued Chippewa for her injuries, claiming that Chippewa knew the wet driveway was a dangerous condition, but still failed to warn her about it. In support of her claim, plaintiff provided the trial court with a declaration from a security guard employed by an independent contractor providing security services in INS at the building. The security guard stated that the water came from sprinklers on the premises, and flowed down the driveway. The security guard also stated that he knew of another instance during his employment when someone had slipped and fallen in the same general area as plaintiff.

Chippewa argued that the allegedly dangerous condition plaintiff encountered – the water and wetness at the area where she fell – was "open and obvious". Chippewa provided the trial court with a declaration from one of its employees, a maintenance supervisor for the building. The maintenance supervisor stated that the premises were not watered during the daytime because they were on a timer set for 8:00 p.m. The maintenance supervisor asserted that the water did not come from the premises, but instead was tracked in by vehicles entering the driveway from the street.

The trial court recognized the conflicting evidence regarding the source of the water and the defendant's responsibility for it, but terminated the action in defendant's favor based on its ruling that the pres-

ence of the water was open and obvious.

Plaintiff appealed. The Court of Appeal determined that even though the dangerous condition created by the water on the ground was "open and obvious", the property owner may have a duty to remedy the danger if it was foreseeable that the danger could cause injury despite the fact that it was obvious.

The Court reasoned that although the obviousness of a danger may obviate the duty to warn of its existence, if it is foreseeable that the danger may cause injury despite the fact that it is obvious (e.g., when necessity requires persons to encounter it), there may be a duty to remedy the danger, and the breach of that duty may in turn form the basis for liability. Thus, although the hazard was open and obvious, the fact alone did not relieve the property owner of all possible duty.

As a result, the Court of Appeal reinstated plaintiff's claim, and returned the case to the trial court. Of course, and as noted by the Court of Appeal, a fact finder could still determine that plaintiff was comparatively negligent depending upon the ultimate evidence, including the exact manner in which she navigated the area.

THE LESSON: If you're aware of a potential hazard on your premises, it is probably in your best interests to undertake reasonable measures to remedy the hazard.

■ CAIIA *Calendar*

■ CAIIA Mid-Term

March 11th thru 14th, 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.

Los Angeles Business Owner Sentenced to Pay \$1.8 Million in Fines and Restitution and Placed on Five Years Probation After Conviction on Felony Workers' Compensation Fraud

Picture framing business defrauded major insurers with complex fraud scheme that helped owner underreport wages at the firm by \$7 million

LOS ANGELES – A Los Angeles business owner was sentenced to pay \$1.8 million in restitution and fines this week after a three-year joint investigation involving the California Department of Insurance found he had underreported wages at his picture framing operation by some \$7 million.

Randy Greenberg, 46, of Los Angeles, was sentenced in Los Angeles County Superior Court on November 29 to a two year suspended state prison term, and placed on five years probation on four felony counts of workers' compensation fraud and one felony count of fraud and embezzlement.

The case was prosecuted by the Los Angeles County District Attorney's Office Workers' Compensation Insurance Fraud Division, working jointly with the California Department of Insurance. The Department received assistance from the State Compensation Insurance Fund (SCIF) and American International Group (AIG), Internal Audit Support Group.

"Workers' compensation insurance fraud is a tremen-

dous drain on the resources and spirit of our injured workers and honest employers. It will not be tolerated by my office", said Commissioner John Garamendi. "These crimes affect every business owner who is struggling to compete in a competitive market. By fighting this fraud, we are working to ensure that everyone competes on a level field." CDI investigators discovered that Greenberg and his picture framing business, KBST, Inc., were defrauding State Compensation Insurance Fund and AIG from 1998 to 2001. Greenberg's schemes used shell corporations, fraudulent workers' compensation applications, underreporting of payroll and manipulation of employee job classification applications codes to hide \$7 million in wages.

Greenberg was ordered to pay \$677,693 in restitution to SCIF, \$276,413 to AIG, and \$863,000 to the Workers' Compensation Fraud Assessment Commission for the cost of the investigation.

The California Department of Insurance sent an e-mail to the executive office of the CAIIA, giving us the current cost for the IA license and other fees now in effect for independent adjusters. We publish this for the benefit of our members.

INSURANCE CODE SECTION	FEE CATEGORY	CURRENT FEE	NEW FEE
LICENSES AND PENALTIES			
INSURANCE ADJUSTER LICENSES			
14097(a)	Original license application	\$ 55.00	\$ 61.00
14097(b)	Original branch office certification	35.00	39.00
14097(c),(d)(1)	Original license & renewal of license	219.00	241.00
14097 (c), (d)(2)	Brand office certificate renewal	44.00	48.00
14097(f)	Delinquency, 50% of renewal, not to exceed	55.00	61.00
14097(g)	Re-examination of applicant of applicants manager	22.00	24.00
14042	Additional fictitious business name or change	19.00	21.00
14042	License reissued in a fictitious business name	22.00	24.00

CAIIA NEEDS DIRECTORY UPDATES

Please let us know your directory updates ASAP by e-mailing all changes to harperclaims@hotmail.com.

This is all new office information, managers, phone numbers, deletions, etc.

The Association is in the process of printing the new directory.

This goes out to about 1200 people across the nation.

We hand deliver about 500 directories at various adjuster events (CCC, CCNC, conventions, etc.).

CAT BATH

1. Put both lids of the toilet up and add 1/8 cup of pet shampoo to the water in the bowl.
2. Pick up the cat and soothe him while you carry him towards the bathroom.
3. In one smooth movement, put the cat in the toilet and close both lids. (You may need to stand on the lid.)
4. The cat will self agitate and make ample suds. Never mind the noises that come from the toilet, the cat is actually enjoying this.
5. Flush the toilet three or four times. This provides a "power wash" and "rinse".
6. Have someone open the front door of your home. Be sure that there are no people between the bathroom and the front door.
7. Stand behind the toilet as far as you can and quickly lift both lids.
8. The cat will rocket out of the toilet, streak through the bathroom and run outside where he will dry himself off.
9. Both the commode and the cat will be sparkling clean.

Sincerely, The Dog

Adjuster Killed in Tampa, Foul Play Suspected

November 15, 2004

A Florida insurance adjuster was found slain in a river near a hurricane-damaged rental home she was supposed to inspect and the tenant was being questioned.

Katrina Anne Froeschle, 25, had been sent to the home on the Hillsborough River on Friday to inspect it for Farm Bureau Insurance after the owner reported storm damage to roof.

She contacted her boss by cell phone as she headed to the house. Her family reported her missing Saturday when they were unable to reach her. Her body was found in the river behind the house later Saturday. An autopsy showed she had suffered blunt force trauma to her upper body.

Police arrested the home's 27-year-old tenant, Jason Funk, on drug charges Sunday after officers said they found 19 marijuana plants growing in the house. Detectives say he is "a person of interest" in Froeschle's slaying, but he has not been charged with her death.



17th Annual Combined Claims Conference

Education Lights the Way

March 15-16, 2005 - Pacific Palms Conference Center - City of Industry, CA

Two complete days of sessions on Property, Casualty and Workers' Compensation

Continuing Education Credits for CPCU, RPA, MCLE, CPI and California Department of Insurance.

March 15, 2005 - Tuesday
9:00 am - 10:00 am

General Session
Earthquake-What's Shakin'?

10:30 am - 12:00 pm

Track I - Property
Earthquake – Are You Ready for the Big One?

Track II - Liability
Toxic Exposures and Coverage Issues

Track III - Workers' Compensation
From OSHA Compliance To World Class Safety - Effective Safety Programs for Loss Conscious Companies

1:30 pm - 2:30 pm

Track I - Property
Building Forensics – What the Adjuster May Not See

Track II - Liability
How Public are the Records?

Track III - Workers' Compensation
New Laws in Workers' Compensation

3:00 pm - 4:30 pm

Track I - Property
Handling Water Damage Claims in the World of the Absolute Mold Exclusion

Track II - Liability
Passenger Vehicle Event Data Recorders – Use in Traffic Accident Analysis and Reconstruction

Track III - Workers' Compensation
Jury Debriefing

March 16, 2005 - Wednesday
9:00 am - 10:30

General Session -
Mock Trial and Picking the Jury

11:00 am - 12:00 pm

Track I - Property
Property Fraud: Is the Damage Consistent with the Incident?

Track II - Liability
Liability Fraud: What Do You Owe?

Track III - Workers' Compensation
Why is it Easier to Convict Someone of Murder than Workers' Comp Fraud?

1:30 pm - 2:30 pm

Track I - Property
Why Vehicles Burn!

Track II - Liability
Utilizing Photogrametric Programs in Accident Reconstruction

Track III - Workers' Compensation
Fighting Lienholders and ACOEM Guidelines

3:00 pm - 4:00 pm

Track I - Property
Subrogating Large Complex Losses

Track II - Liability
Subrogation in Liability Claims

Track III - Workers' Compensation
Subrogation in Workers' Compensation

4:00 pm - 4:45pm

Live Car Stripping Demonstration - Hey Dude! Where's My Car?

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► Please fill out this registration form completely and mail with the appropriate fee to above address. One registration form per person, photocopies accepted

► Conference registrations include continental breakfast, breaks and lunch on the day(s) you are attending as well as admission to all sessions, any handouts provided, and a conference program.

Name _____

Title _____

Company _____

Badge Name _____

Street Address _____

C/S/Z _____

Phone _____ Fax _____

Email _____

Substitutions and Cancellations: Registrants may send a replacement or substitute at any time prior to the conference at no additional fee. Registrants who must cancel will receive a full refund (minus a \$10 administration fee) prior to February 28, 2005. Individuals who do not attend or do not cancel in advance are liable for the entire conference fee. Cancellations must be in writing.

Conference registration is discounted for certain fields in the insurance and claims industry. The nature of my work is: (check one)

- Claims Insurance Company Risk Management
 Attorney Private Investigation

Classification - Please check all that apply to your field.

- | | |
|--|---|
| <input type="checkbox"/> Insurance - Workers' Comp | <input type="checkbox"/> Claims Supervisor |
| <input type="checkbox"/> Insurance - Property | <input type="checkbox"/> Self-Insured |
| <input type="checkbox"/> Insurance - SIU | <input type="checkbox"/> Risk Manager |
| <input type="checkbox"/> Insurance - Liability | <input type="checkbox"/> Investigator |
| <input type="checkbox"/> Claims Adjuster | <input type="checkbox"/> Agent/Broker |
| <input type="checkbox"/> Attorney | <input type="checkbox"/> Other - Legal Profession |

Conference Fees - Parking at the Conference Center is included.

I do work in the fields checked above. Please register me for the following rate:

- | | |
|--|----------|
| <input type="checkbox"/> Two Day Conference Registration | \$150.00 |
| <input type="checkbox"/> One Day (Tuesday, March 15, 2005) | \$75.00 |
| <input type="checkbox"/> One Day (Wednesday, March 16, 2005) | \$75.00 |

I do not work in the fields listed above. Please register me for the following rate:

- | | |
|--|----------|
| <input type="checkbox"/> Two Day Conference Registration | \$400.00 |
| <input type="checkbox"/> One Day (Tuesday, March 15, 2005) | \$200.00 |
| <input type="checkbox"/> One Day (Wednesday, March 16, 2005) | \$200.00 |

EXECUTIVE OFFICE DUTY DISTRIBUTION AND COMMITTEES

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