CAIIA Status Report

JANUARY 2007

CPLIC is on the MOVE

As a service to our members, the Status Report reports that Claims Professional Liability Insurance Company, a risk retention group for independent adjusters has some exciting developments to pass on to you.

I. National

A. The group now numbers over two hundred and fifty nationally.

B. Written premium is expected to top two million.

C. Paid losses expected to remain about 3 percent.

D. We have eliminated the certificate charge.

E. AI endorsements are allotted free based on premium size.

F. Limits from $500,000 to $5,000,000 available.

G. Minimum premium reduced to $900 plus tax.

II. California

A. Territory surcharge reduced.

B. Experience in CA has been excellent.

C. A commitment to grow in CA.

D. Annual shareholder's meeting recently in CA.

E. CPLIC Administrative Office in CA.

F. CPLIC General Counsel located in CA.

CPLIC RRG is a professional liability insurance company which is owned by its members and run by its members for the good of its members. For more information about their products and to see if you qualify, please visit their web-site at www.cplic.net or contact any of the officers or their customer service representatives at their address:

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Tustin, CA 92780
(877) 572-7542

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California Association of Independent Insurance Adjusters

An Employer Organization of Independent Insurance Adjusters

Inside This Issue

***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.*

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■ PRESIDENT'S MESSAGE

Well what I thought was going to be a long arduous process with my water bill has dried up (note the pun). It appears we discovered there was no leak and the meter had been misread the previous cycle. As a claims adjuster, however, I needed to see the documentation and so the water company's "water conservationist" had to provide me with a printout of the last 2 year's billings. It did not stop there, because I also had kept my own records for comparison. Unfortunately, I did not have a leg to stand on and in the end I paid the bill less a small amount I was able to negotiate. The lesson learned here is that having the necessary adjusting skills can be beneficial in all types of situations.

As 2006 has come to an end and I reflect over the past year, I am reminded of how thankful for not only my personal achievements including my family, but also how thankful I am to be part of this organization. The members of this organization are truly a volunteer organization. How quickly we have been able to accomplish tasks, because everyone has stepped forward when requested and we have been able get the job done.

As New Year has begun, the new and updated 2007 CAIIA Directories have been mailed. If you did not receive your copy, please contact any one of the board members including myself and we will be sure to get one to you. We also wish to take this opportunity to acknowledge our sponsors who made the printing of the Directory possible. The website is also in the process of being updated and we invite you to visit us at www.caiia.org for information pertaining to our members as well as current news and links to various insurance information.

Lastly, we are planning our Mid-term conference. This year's event is scheduled for February 22 and 23 at the Hotel Healdsburg in Healdsburg, California. If interested in attending please look for the Registration Form in the Status Report or you can obtain the Form from the website.

SHARON GLENN
President - CAIIA 2006-2007

FRAUD Advice from Peter Schifrin and Frank Zeigon

I was having lunch the other day with fellow CAIIA member Frank Zeigon. Believe it or not, we started discussing the Fair Claims Settlement Practices Regulations. Frank brought up a provision in the Regulations that is often not followed.

All of you are aware that upon receiving proof of claim, every insurer, except for those not governed by the Regulations, "shall immediately, but in no event more than forty (40) calendar days later, accept or deny the claim, in whole or in part."

And, you all know that "where there is a reasonable basis, supported by specific information available for review by the California Department of Insurance, for the belief that the claimant has submitted or caused to be submitted to an insurer suspected false or fraudulent claim as specified in California Insurance Code Sections 1871.1(a) and 1871.4(a), the number of calendar days specified in subsection 2695.7(b) shall be:

(1) increased to eighty (80) calendar days; or,

(2,) suspended until otherwise ordered by the Commissioner, provided the insurer has complied with California Insurance Code Section 1872.4 and the insurer can demonstrate to the Commissioner that it has made a diligent attempt to determine whether the subject claim is false or fraudulent within the eighty day period specified by subsection 2695.7(k) (1)."

What you may not be aware of is that:

"1872.4. (a) Any company licensed to write insurance in this state that believes that a fraudulent claim is being made shall, within 60 days after determination by the insurer that the claim appears to be a fraudulent claim, send to the Bureau of Fraudulent Claims, on a form prescribed by the department, the information requested by the form and any additional information relative to the factual circumstances of the claim and the parties claiming loss or damages that the commissioner may require."

In CAIIA training classes we have always suggested that if a claim is being handled as a suspected fraudulent claim, that an FD-1 form be submitted to the California Department of Insurance Fraud Division. Now, based on the connection of the SIU Regulation wording in CIC 1872.4, it appears mandatory that this be done within 60 days after the claim has been determined to appear fraudulent.

A non-admitted insurer might argue that they are not subject to the 60 day reporting requirement. However, it is my opinion that they would be best served to follow the rule. If any insurer is treating a claim as being suspicious, and taking the extra time to investigate it, failing to file an FD-1 is going to be one of the first issues brought up in a bad faith suit.

We are in the process of scheduling the 2007 CAIIA Educational Events. Look for dates and locations in the next Status Report.

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law - San Francisco, CA

Insurance - Exclusion For Employment Related Practices Does Not Prevent Coverage

North American Building Maintenance, Inc. v. Fireman´s Fund Insurance Co., Court of Appeal, Fifth District - March 9, 2006

This case presents the issue of whether an insurance company owes a duty to defend its insured, under a commercial general liability (CGL) policy, against a lawsuit brought by a third party alleging assorted labor violations as well as a cause of action for false imprisonment.

Plaintiff North American Building Maintenance (NABM) provided janitorial services for Target stores. NABM, in turn, subcontracted with California Building Management Services (CBMS) to perform the actual work at the Target stores. In September 2002, three former janitorial workers at a Target store in Santa Barbara filed a class action lawsuit for damages and injunctive relief. Target and NABM were named as defendants. CABM was inaccurately identified in the original complaint as a dba of NABM. The complaint asserted 11 causes of actions. The janitors claimed that they were not properly paid for their work. They also alleged they had been locked in the business premises at night, against their will, while they performed their janitorial services.

NABM tendered defense of the suit to its CGL carrier, Defendant Fireman´s Fund Insurance Co., on the theory there was potential liability and thus, the potential right to indemnification and a duty to defend on the false imprisonment claim. Fireman´s Fund denied it had a duty to defend NABM on any cause of action, including the alleged false imprisonment.

The subject CGL policy contained coverage for "personal and advertising injury" caused by an offense arising out of NABM´s business. "Personal and advertising injury" in the policy was defined to include "false arrest, detention or imprisonment." The policy´s coverage exclusions were supplemented by an "Employment-Related Practices" liability exclusion (EPL exclusion). This exclusion included any employment-related practices, policies, acts or omissions. Fireman´s Fund´s refusal to defend was primarily based on the EPL exclusion.

In October 2003, NABM filed the subject action against Fireman´s Fund for breach of contract, insurance bad faith, unfair business practices, and declaratory relief. NABM and Fireman´s Fund each filed motions for summary adjudication, which were limited to the question whether Fireman´s Fund had a duty to defend NABM against the claim of false imprisonment. The trial court found in favor of Fireman´s Fund. NABM appealed. The Fifth District Court of Appeal reversed.

The Court of Appeal reiterated the fundamental rule that an insurer has a duty to defend an insured if it becomes aware of, or if the third party lawsuit pleads, facts giving rise to the potential for coverage. Here, a complicating issue was the fact that the original complaint wrongly alleged there was an employment relationship between the janitors and NABM. The evidence showed that the janitors were independent contractors. NABM argued that the EPL exclusion could only apply if there was an employment relationship between the insured and the third party claimant. Fireman´s Fund contended that the exclusion was broad and applied whether the janitors were employees or not.

The Court of Appeal sided with NABM. Analyzing the language of the policy, the court held that the only reasonable interpretation was that the EPL exclusion only applied where the insured was a past, present, or prospective employer of the third part claimant. Because the exclusion could not apply to a claim by an independent contractor, the Court held that Fireman´s Fund had a duty to defend NABM based on the false imprisonment cause of action. The judgment in favor of Fireman´s Fund was, therefore, reversed.

COMMENT

This case provides a further example that an insurer´s duty to defend is extremely broad. While the complaint indicated there could be an employment relationship between the janitors and NABM, extrinsic facts revealed there was no employment relationship, and that the EPL exclusion did not apply. Therefore, Fireman´s Fund had a duty to defend.

Continued on page 5

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law - San Francisco, CA

Damages - Evidence of Gratuitous Payments Barred By Collateral Source Rule

Smock v. State of California, Court of Appeal, First District - April 18, 2006

The Collateral Source Rule bars defendants from introducing evidence to show that a plaintiff has received benefits from a party not involved in the litigation to compensate for the damages the plaintiff sustained. The rule has often been criticized as permitting a plaintiff to receive a double recovery.

In this case, Plaintiff Morgan Smock was seriously injured in a traffic accident on the San Francisco-Oakland Bay Bridge. Smock filed a complaint alleging his injuries were caused by the negligence of another driver and a dangerous condition of State of California property. The case proceeded to trial in Alameda County Superior Court. The jury found for Smock and apportioned 10% liability to the State and 90% to the other driver. Tort damages included past and future medical expenses, and past lost earnings.

At the time of the accident, Smock was an attorney, who had recently become a partner in a law firm. As a result of his injuries, Smock did not work for portions of two years. Nevertheless, his law firm paid his agreed salary and bonus without any reduction. At trial, the court applied the Collateral Source Rule, and excluded evidence of the payments by his employer from the jury's consideration. After hearing the evidence, the jury awarded Smock $108,000 in lost earnings. The State appealed. The First District Court of Appeal affirmed.

On appeal, the State contended that the Collateral Source Rule should not apply, because its policy justifications are not fulfilled when the rule is applied to exclude gratuitous payments made to a plaintiff. The Court of Appeal disagreed, holding that the rule is an essential element of our tort damage system. The Court pointed to various policy justifications. In particular, the rule does not provide double-recovery in situations where the payor has a right of subrogation or reimbursement. In situations where the victim's insurance provides compensation, the rule is said to serve a public policy of encouraging people to purchase and maintain insurance. Further, the Collateral Source Rule is also considered to play a necessary role in the calculation of damages. For example, the cost of medical care is often an important indicator of Plaintiff's general damages.

The Court held that under California law, it makes no difference if the benefit or payment arises from some gratuitous payment, or from some obligation. In the end, while barring the collateral source from consideration by the jury could benefit a plaintiff, allowing it to be considered would benefit the wrongdoer. The First District chose to give the benefit to Mr. Smock. The judgment was therefore affirmed.

COMMENT

The case provides a good example of courts being reluctant to place limits on the Collateral Source Rule. As the Court of Appeal commented, if changes are going to be made to the long-established rule, they will need to come from the Legislature.

CAIIA *Calendar*

Combined Claims Conference

March 13 - 14, 2007
Pacific Palms Conference Center
Industry Hills, California
Call 1-888-811-6933
for information or
e-mail: info@combinedclaims.com

Trauma Scene Mitigation and Abatement

Effective Site Remediation for Health, Safety and Liability

By John F. Birrer, Asepsis Technology, Healdsburg, CA

Criminal acts and industrial accidents with blood spills in their aftermath have become a common property damage claim for adjusters. Such trauma scenes of violence or death come as the result of many different situations. Business owners are often faced with the results of robberies, murders, bar fights and workplace violence in office buildings, convenience stores, schools, motels and factories. Homeowners and property managers face trauma scenes following suicides, medical emergencies and belatedly discovered natural deaths.

When faced with this type of bloody scene, families, business owners and insurance adjusters alike feel an overwhelming sense of urgency and desire to protect their loved ones, employees, customers and insureds from harm. But, despite their good intentions, they often fail to protect themselves from pathogens in blood, other body fluids and tissue present at these scenes.

There are many issues that arise at trauma scenes, such as physical exposure, disinfection of surfaces, segregation of the waste, abatement and disposal. However, with recent changes in the California Health and Safety Code regarding cleaning and disposing of trauma waste, families, business owners and adjusters may now have the answer to these dilemmas.

On January 1, 1998, the Trauma Scene Waste Management Act (SB 1034) became law. Authored by the late Senator Ken Maddy of Fresno, this legislation regulates blood, body fluids and human tissue deposited in public, homes and businesses (anywhere outside of a healthcare environment). "Trauma scenes", "trauma scene waste", and "trauma scene waste practitioner" were defined, and the California State Department of Health Services was designated the sole enforcement agency.

Prior to this, blood, body fluids and tissue (known as medical waste) were only regulated in hospitals and doctor's offices. The same waste, if found in public, could be taken to landfills, washed down gutters and cleaned up by untrained personnel.

One of the major provisions of SB 1034 requires that any person dealing in the commercial cleanup, abatement and disposal of blood and body fluids in the public shall register with the Department of Health Services. The company's vehicle fleet and their offsite waste treatment facility must be disclosed. DHS also assumed other responsibilities in the documentation of personal protection equipment, technologies, chemicals and manifest documentation. The California Legislature found these changes to directly affect the health and safety of the public.

But what about protecting the insurance adjuster? Adjusters should consider the same health and safety issues in protecting themselves and their company. Assessment and inspection of a claim may unnecessarily expose adjusters and their insureds to blood-borne pathogens. Very often, trauma scene waste is traced from the scene throughout the property, into vehicles, to other properties, back to the office and then home. Adjusters who become aware of a trauma scene should have it locked down and get registered, trained and competent trauma scene management technicians to inspect the scene. Many companies offer special services attractive to adjusters, such as 24/7 emergency response and free estimates.

Many registered trauma scene management companies network with adjusters to create photographic documentation and reconstruction of the incident. Utilizing a trained technician will not only guarantee efficient processing of the structure, but also free the adjuster to focus on other aspects of the claim.

Many state and federal OSHA standards have been expanded to apply to any employee in the private sector who has reasonable knowledge of a health hazard exposure and intentionally disregards that hazard. If such an incident results in injury or death, civil as well as criminal penalties can be levied.

By contracting with a registered trauma scene management company for biohazardous scene remediations, insurance adjusters can protect their insureds and themselves from health hazards and alleviate their liability.

2007 Combined Claims Conference * Teaming Up For Education

Conference Registration and Session Sign-Up

March 13 - 14, 2007 * Pacific Palms Conference Center * Industry Hills, California

Questions, please call: 888.811.6933 or email: info@combinedclaims.com

Please fill out this registration form completely. One registration form per person. Photocopies accepted

Name: _____

Company: _____

Address: _____

City, State, Zip: _____

Email: _____

Phone: _____ Fax: _____

Tuesday, March 13, 2007

9:00 – 10:15AM

- ❑ General Session — Fraud Comes in Many Ways

11:00 AM – Noon

- ❑ Track I – Liability — Anatomy of a Claim
- ❑ Track 2 – Property — Catastrophe- Psychological Trauma
- ❑ Track 3 – WC — How Long Before Malingering?

Noon – 1:30 PM

- ❑ Lunch/Speaker — John Cappelletti

1:30 - 2:30 PM

- ❑ Track I – Liability — Mastering Mediations
- ❑ Track 2 – Property — Negotiating Business Interruption
- ❑ Track 3 – WC — Subrosa – For Negotiating

3:13 - 4:15 PM

- ❑ Track I – Liability — Construction Defect/Multiple Party Suits
- ❑ Track 2 – Property — When Small Property Claims Run Amuck
- ❑ Track 3 – WC — WC Apportionment Rules

Wednesday, March 14, 2007

9:00 – 10:15AM

- ❑ General Session — Street Level Ethics

11:00 AM – Noon

- ❑ Track I – Liability — CGL's Top 10 Coverage Issues List
- ❑ Track 2 – Property — Property Law Updates
- ❑ Track 3 – WC — Burns in the Work Place

Noon – 1:30 PM

- ❑ Lunch — Recognition of new designees

2:00 - 3:00 PM

- ❑ Track I – Liability — Settling Liability Claims
- ❑ Track 2 – Property — Mitigating Claims After Water Damage
- ❑ Track 3 – WC — Workers' Compensation Subrogation

3:15 – 4:30 PM

- ❑ General Session — Animal Liberation and Environmental Extremism – Trends in Domestic Terrorism

Conference registrations include parking at the conference center, 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.

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

❑ Claims ❑ Insurance Carrier ❑ Risk Management ❑ Attorney ❑ Private Investigation

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

❑ Two Day Conference Registration	$160.00
❑ One Day (Tuesday, March 13, 2007)	$85.00
❑ One Day (Wednesday, March 14, 2007)	$85.00

No, I do not work in the fields listed above. Please register me for the following rate:

❑ Two Day Conference Registration	$400.00
❑ One Day (Tuesday, March 13, 2007)	$200.00
❑ One Day (Wednesday, March 14, 2007)	$200.00

Payment - Checks, American Express, Discover, Master Card and Visa accepted.

Mail form and check or credit card information to: CCC - PO Box 7204 - San Jose, CA 95150 or by fax to 888.969.6922 if paying by credit card.

❑ By Credit Card — Authorization for payment in the amount of $ _____

Credit Card Number: _____ Exp Date: _____ Security Code: _____

Billing Address: _____

Name on Card: _____ Signature: _____

❑ By Check — Check Number: _____ in the amount of $ _____

Why Athletes Can't Have Real Jobs:

Chicago Cubs outfielder Andre Dawson on being a role model: I wan' all dem kids to do what I do, to look up to me. I wan' all the kids to copulate me."

New Orleans Saint RB George Rogers when asked about the upcoming season: "I want to rush for 1,000 or 1,500 yards, whichever comes first."

And, upon hearing Joe Jocobi of the 'Skins say: "I'd run over my own mother to win the Super Bowl," Matt Millen of the Raiders said: "To win, I'd run over Joe's Mom, too."

Torrin Polk, University of Houston receiver, on his coach, John Jenkins: "He treats us like men. He lets us wear earrings."

Football commentator and former player Joe Theismann, 1996: "Nobody in football should be called a genius. A genius is a guy like Norman Einstein."

Senior basketball player at the University of Pittsburgh: "I'm going to graduate on time, no matter how long it takes."

Bill Peterson, a Florida State football coach: "You guys line up alphabetically by height." And, "You guys pair up in groups of three, then line up in a circle.

Boxing promoter Dan Duva on Mike Tyson hooking up again with promoter Don King: "Why would anyone expect him to come out smarter? He went to prison for three years, not Princeton."

Stu Grimson, Chicago Blackhawks left wing, explaining why he keeps a color photo of himself above his locker: "That's so when I forget how to spell my name, I an still find my clothes.

Lou Duva, veteran boxing trainer, on the Spartan training regime of heavyweight Andrew Golota: "He's a guy who gets up at six o'clock in the morning regardless of what time it is."

Chuck Nevitt, North Carolina State basketball player, explaining to Coach Jim Valvano why he appeared nervous at practice: "My sister's expecting a baby, and I don't know if I'm going to be an uncle or an aunt." (I wonder if his IQ ever hit room temperature in January.)

Frank Lyden, Utah jazz president, on a former player: "I told him, 'Son, what is it with you? Is it ignorance or apathy?' He said, 'Coach, I don't know and I don't care.' "

Shelby Metcalf, basketball coach at Texas A&M, recounting what he told a player who received four F's and one D: "Son, looks to me like you're spending too much time on one subject."

Amarillo High School and Oiler coach Bum Phillips when asked by Bob Costas why he takes his wife on all the road trips, Phillips responded: "Because she is too doggoned ugly to kiss good-bye."