

The DOI Calls Upon the CAIIA For Help

The Executive Office of the California Association of Independent Insurance Adjusters (CAIIA) received a call from Charlene Ferguson of the California Department of Insurance (DOI) on Thursday, January 15, 2004. The DOI is in the process of re-writing the state exam to become an independent insurance adjuster (as well as the public adjuster's license) and preparing to implement a new law requiring workers compensation adjusters to have continuing education. They asked the rhetorical question, "What better organization than the state professional association of independent insurance adjusters to help us?"

The real problem for us was to respond quickly. The CAIIA had to have the two names to the DOI no later than Monday, January 19, 2004. The word went out to the 36 names on the e-mail list currently at the executive office. The members responded quickly and positively to the request. The Executive Board had the names of 12 volunteers for the job by Friday, January 16, 2004, less than 24 hours after the request was made by the DOI. It is no easy task for the volunteers, either. Ferguson told us that the process will take up to two days and no firm date had yet been set. The re-write is scheduled to take place during either the first or third week of March 2004, in Sacramento. The fact that this was to be held in Sacramento did not deter anyone. The volunteers came from Burbank, Van Nuys, Ventura, Sacramento, Walnut Creek, Roseville and Petaluma.

As it turned out, the toughest part of the job was for the Executive Board to choose from all of the qualified volunteers. After e-mail and phone discussions, the Board has chosen Steve Tilghman, AIMS, Sacramento, and Sharon Glenn, John Glenn Adjusters and Administrators, Walnut Creek. Tilghman has vast property experience for the task, while Glenn will bring with her a wealth of casualty knowledge.

Ferguson called the Executive Office on Friday, January 16, and asked for information on the number of workers compensation adjusters in the state. It appears that the DOI is thinking of either "grandfathering" in certain work comp adjusters or devising a test that experienced adjusters can take in lieu of the continuing education at least for the first year.

Another item of interest is that Ferguson theorized that all adjusters may be required to complete continuing education and licensing in the future. The Board wants to thank all of those who volunteered for this very important task. Hopefully, Glenn and Tilghman will let the Status Report editor know of their success and allow their experience about this important assignment to be published in the future.

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**California Association of
 Independent Insurance Adjusters**



*An Employer
 Organization of
 Independent
 Insurance Adjusters*

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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@caiiia.org.

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■ **PRESIDENT'S MESSAGE**

I am quite the packrat, as those who know me best would be happy to tell you. It is hard for me to discard anything – what if I might need it someday. I'm sure that is the excuse given by most of us who just can't seem to throw stuff away! My wife tells me we need to get "ruthless" and clean out our garage, or soon we won't be able to park our cars there.

The same could be said of my office. I recently moved my office from one suite in our group of building to another, and amazement is the only word to describe my mood as I sifted through all of the stacks of paper I have kept since I last moved. I think it was 8 or 10 years ago or so, I can't really remember. It doesn't really matter, since I definitely wasn't "ruthless" the last 2 or 3 times I moved! All this storage has proved worthwhile on more than one occasion, when I have been able to come forth with a triumphant "Aha!" as I found some old document someone needed for something or other.

What does this have to do with the CAIA you might ask? Aha! Glad you asked! During the move, I discovered quite the treasure trove of old CAIA Status Reports, going back many, many years. I just couldn't throw them away, even before I was a Board member, or had any idea I would ever be writing this column. It has been a lot of fun, not to mention a history lesson of the CAIA, reading the President's Message from so many Past Presidents. I wonder if they had any idea, when they wrote those words, that someone might be reading and comparing their columns so many years later? One column provides quite some irony, as a CAIA President came to the defense of then Insurance Commissioner Chuck Quackenbush when early criticisms were being widely publicized. "Leave him alone, and let him do his job", urged our President! A front page article in a subsequent Status Report on the Quackenbush scandal just a few years later underlines the irony.

In any event, there were definitely recurring themes coming through loud and clear, year after year, from virtually every President who ever wrote a column. The value and benefits of being a member of the CAIA. Member involvement and participation in Association events. Education, and more education. Change and the absolute need to change with the times to survive in this business. The importance of Service, with a capital "S", in our industry – as President Steve Anderson said in June of '99, "A satisfied



customer is the best business strategy of all." Speaking of Education, elsewhere in this newsletter you will find a registration form for the annual Re-certification Seminars held around the state by the CAIA, in February. We offer full certification, and re-certification seminars, depending on the location. Take advantage of this opportunity, and sign up now!

Speaking of member involvement and participation in Association events, CAIA members will also find in the February and March issues of the Status Report (and on our website) a registration form for the CAIA mid-term meeting on March 24-25, 2004, at the Marriott Newport Beach and Tennis Club. Attendees will enjoy meeting with their peers in this beautiful location overlooking Balboa and the Pacific Ocean. The mid term this year immediately follows the Combined Claims Conference, being held 3/23-24, also in Southern California. Hotel registration and Conference registration fees are the lowest they have been in many years! The CAIA Board this year has determined to hold the cost of attending this meeting as low as possible to encourage more members to come and participate in your association!

I hope to see you in March – I'll tell you how I ruthlessly (but painfully) threw away over 50% of my accumulated treasures during this last move! On to my garage!

LEE COLLINS, ARM

President - CAIA 2003-2004

Insurance Law Update

Prepared by Sedgwick, Detert, Moran & Arnold, LLP

LOSS OF COMPUTER DATA

In *Ward General Ins. Services v. Employers Fire Ins. Co.*, 2003 WL 22962831 (Cal.App. Dec. 17, 2003), a California appellate court found that the loss of stored computer data, unaccompanied by a loss or destruction of the storage medium, is not covered by a first-party insurance policy that required "direct physical loss" to trigger coverage.

The court declined to use public policy as an interpretative aid, rejecting the policyholder's argument that public policy favors a finding of coverage because of the importance to our economy of computers and the database systems they support.

BAD FAITH

In 2,022 *Ranch v. Superior Court*, 113 Cal.App.4th 1377, 7 Cal.Rptr.3d 197 (2003), the California Court of Appeal held that a title insurance company's use of claims attorneys to adjust losses did not mean that all documents prepared by the claims attorneys would be protected from discovery by the attorney-client privilege or the work product doctrine. In determining whether a privilege would apply, the court relied on the "dominant purpose" test, which looks to the dominant purpose of the attorney's work. The court gave examples of attorneys doing work that need not be done by an attorney (labor negotiator, business agent, conduct of a pre-litigation investigation, and the like) and found that such documents would not be privileged. The attorney-client privilege and work product doctrine may not be available where attorneys are hired solely to investigate or adjust a claim or to negotiate a contract rather than to provide legal advice.

The court emphasized the importance of claims files as evidence in insurance bad faith cases. In general, the jury is entitled to know exactly what information was in the insurer's claim file, as there is no other way for the jury to properly determine whether the insurer acted fairly and in good faith in its handling of the claim. The court defined the claim file as a unique, contemporaneously prepared history of the company's handling of the claim. In an action for bad faith, the need for substantial, but overwhelming.

SELF-INSURED RETENTION

In *Black Diamond Asphalt, Inc. v. Superior Court*, 2003 WL 22902947 (Cal.App. Dec. 10, 2003), the California Court of Appeal found that an insured with a self-insur-

ance retention is not an insurer. A self-insured retention is not considered insurance.

PUNITIVE DAMAGES

Two districts of the California Court of Appeal recently interpreted California law on punitive damages following the U. S. Supreme Court's decision in *State Farm v. Campbell*. Their conclusions, while not legally inconsistent, are quite distinct and are likely to cause the California Supreme Court to consider the issue.

In *Romo v. Ford Motor Co.*, 2003 WL 22784959 (Cal.App. 2003), the trial resulted in an award of compensatory damages of approximately \$5.0 million and punitive damages of \$290 million. Upon reconsideration of the punitive damages in light of *State Farm v. Campbell*, the Fifth District Court of Appeal reduced the punitive damage award to just under \$24 million.

The *Romo* decision – if upheld by the California Supreme Court – is a landmark, watershed decision. It completely reshapes the law of punitive damages in order to comply with U.S. Supreme Court precedent. While punitive damages are still meant to punish the defendant, the punishment must be for conduct directed toward the plaintiff, not in response to the defendant's alleged bad conduct generally. The *Romo* court also reiterated the U. S. Supreme Court's conclusion that most punitive damages awards must be limited to a single-digit multiplier, finding that the particularities of each circumstance would dictate the appropriate amount of the multiplier. The *Romo* court also reiterated that, under the U.S. Supreme Court decision in *Coo-per Industries v. Leatherman Industries*, for constitutional purposes, the appellate court must conduct an independent review of the issue of the excessiveness of a punitive damages award.

In *Simon v. San Paolo U.S. Holding Co., Inc.*, 03 C.D.O.S. 10376 (Cal.App. 2003), the Second District Court of Appeal considered a punitive damages award of \$1.7 million in a case in which the award for compensatory damages was only \$5,000. The defendant had been found liable for fraud in the sale of commercial real estate. Under California law, a defrauded purchaser of real property who does not succeed in acquiring the property may only recover his or her out-of-pocket losses not benefit-of-the-bargain damages. While the out-of-pocket expenses were only \$5,000, the court found that there was evidence that the benefit-of-the-bargain damages would have been approxi-

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Insurance Law Update

Prepared by Sedgwick, Detert, Moran & Arnold, LLP

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mately \$400,000. A punitive damage award of \$1.7 million represented a ratio of slightly more than 4-to-1, had the jury been permitted to award benefit-of-the-bargain damages of \$400,000.

The court found that the ratio could be determined by the harm or damage caused, not limited to the damages actually awarded. Thus, the court found that the \$1.7 million punitive damage award was not a violation of due process.

The *Simon* court did not cite *Romo*, which was decided just a few days earlier. Nor did the *Simon* court conclude that the *State Farm v. Campbell* decision fundamentally changed California law in the manner described by the *Romo* court. Indeed, the *Simon* court cited many traditional California punitive damages decisions supporting its conclusion.

NOTICE OF IMPENDING POLICY CHANGES

In *Pastoria v. Nationwide Ins. Co.*, 112 Cal.App. 4th 1490, 6 Cal.Rptr.3d 148 (Cal.App. 2003), plaintiffs alleged that, prior to purchasing health insurance policies, they were not told of impending material premium increases and benefits reductions under the policies. These changes went into effect two months after plaintiffs received their policies. They asserted that they gave up better insurance from another insurer and that they would not have done so had they been made aware of the impending changes. The court allowed an unfair competition claim under Cal. Bus. & Prof. Code §17200 to proceed beyond the initial pleading stage.

The court found that, under various California Insurance Code sections, insurers have a duty to disclose informa-

tion to prospective policyholders at the time of policy application just as prospective policyholders have a duty to disclose to the insurers. The court found that a violation of a legislatively-declared policy to disclose could meet the test for unfairness under California's unfair competition law.

POLICY GARNISHMENT

In *Garamendi v. Golden Eagle Ins. Co.*, 2003 WL 22801295 (Cal.App. 2003), a California appellate court found that, even when an insurer is in liquidation, a judgment creditor is entitled to recover the full amount of a covered judgment under Cal. Ins. Code §11580 so long as the judgment was obtained through an "independent adjudicatory action". In the case before the court, the defendant had answered the complaint and defended itself all the way up until the week before trial. At that point, it was discovered that the defendant had not paid its franchise taxes and, as a matter of California law, was no longer permitted to appear in the case. The insurer (prior to liquidation), rather than intervening as permitted to provide the defense, elected not to do so. A large judgment was then entered following a five-day trial. In the garnishment action brought by the judgment creditor, the insurer in liquidation argued that the trial actually resulted in a default judgment. The Court of Appeal disagreed, finding that there was a distinction between a default judgment and an uncontested trial. When the insurer has breached its duty to defend, it will be bound by the judgment so long as there was "significant independent adjudicatory action by the court" in a process that does not create the potential for abuse, fraud, or collusion.

CAIIA Re-certification Benefit

As an additional benefit of membership this year, members of the CAIIA who attend the Mid Term Winter Meeting on March 24 and 25, 2004, can be re-certified in the Claims Regulations for no additional charge. The seminar will immediately follow the business meeting on March 25. Sign up and attend the Mid Term Meeting and be re-certified for **free**.

CCC Volunteers Needed

Volunteer to be at our booth for the Combined Claims Conference on either March 23 or 24, 2004, and the CAIIA will pay for your attendance at the conference for the day(s) you are at the conference. This includes lunches and education. Contact Sterrett D. Harper at 818-953-9200 or harperclaims@hotmail.com to volunteer.



CAIIA REGISTRATION FORM
California Association of Independent Insurance Adjusters
ANNUAL MID-TERM BUSINESS MEETING — March 24-25 2004
Newport Beach Marriott Hotel & Tennis Club
900 Newport Center Drive, Newport Beach, CA 92660
(949) 640-4000 1-800-228-9290 Fax — (949) 640-5055 www.marriott.com
CAIIA Room Rate \$119 Single/Double

Attendees must make their own hotel reservations. Hotel Cut-off Date is Wednesday, March 3, 2004

Your Name _____ Significant Other _____

Company _____

Address _____

Phone _____ Fax _____

E-Mail _____

Please specify which events you and your significant other/mate will actually attend by placing a check mark in the box next to the event. Complete a separate form for each registrant, except for spouses.

EVENT	COST	#TICKETS
Registration Package — members with spouse/mate	\$ 125.00	_____
Registration Package — member w/o spouse	\$ 75.00	_____

SCHEDULED EVENTS

	You	Mate	Please make your checks payable to CAIIA or pay by credit card. Mail or E-Mail Registration form and payment to:
3/24 — 6:00 P.M. Registration/Hosted Reception	[]	[]	Lee Collins
3/24 — 7:30 P.M. Dinner	[]	[]	Gregory B. Bragg & Associates, Inc.
3/25 — 8:00 A.M. Continental Breakfast	[]	[]	P.O. Box 619058
3/25 — 9:00 A.M. Business Meeting	[]	[]	Roseville, CA 95661-9058
3/25 — 12:00 P.M. Lunch	[]	[]	lee.collins@gbbragg.com

3/25 — 12:00 P.M. During and following lunch, CAIIA members will be entitled to a 2004 Fair Claims Act Recertification session, included in the Registration Package at no extra charge.

Credit Card: AMEX _____ VISA _____ M/C _____

Cardholder _____

Card No. _____

Expiration Date: _____

Signature: _____

Any Questions, call:
 Lee Collins, Bragg & Associates
 (916) 960-0902

Cut-off date is March 10, 2004. Any registration after that date is subject to a \$35.00 late fee.

CAIA Welcomes a New Member

The CAIA is proud to welcome the following new member;

Seacliff Claims Group, LLC - Maribeth Danko

19362 Beckonridge Lane • Huntington Beach, CA 92648

(714) 374-0240 • (714) 374-0242 (fax)

License # 2D72568

E-mail: mdanko@seacliffclaims.com • Website: www.seacliffclaims.com

Nutrition & Health

For those of us who try to watch what we eat, here's the final word on nutrition and health. It's a relief to know the truth after all those conflicting medical studies.

1. The Japanese eat very little fat and suffer fewer heart attacks than Americans.
2. The Mexicans eat a lot of fat and suffer fewer heart attacks than the Americans.
3. The Japanese drink very little red wine and suffer fewer heart attacks than the Americans.
4. The Italians drink excessive amounts of red wine and suffer fewer heart attacks than Americans.
5. The Germans drink a lot of beer and eat lots of sausages and fats and suffer fewer heart attacks than the Americans.

CONCLUSION: Eat and drink what you like. Speaking English is apparently what kills you.

CAIA Calendar

CAIA 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 Reisinger, 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

Contact: Doug Jackson, 805-584-3494

**CAIA 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 CAIA 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 CAIA 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 CAIA will not refund any registration fee.

Notice: Full certification will be conducted 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

CAIA 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 CAIA, mail registration, certificate, and payment to:

**CAIA – 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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