

FEBRUARY 2006

## News of Members

### Robert (Bob) Lobato Joins Bragg & Associates

We are pleased to announce that effective January 1, 2006, Bob Lobato will join Bragg & Associates as Manager of our new "Inland Empire" office. Bob has 40 years experience in the insurance claims industry, serving as Claims Manager and Regional Claims Manager for carriers, and more recently, owning and managing his successful Pioneer Claims Service. Bob has particular expertise with large and complex property claims, and testifies as an expert witness.

Also joining Bragg is Nick Keller, with 17 years experience, including the last 10 years at Pioneer Claims Service as a multi-line adjuster. Nick also has S.I.U. experience with a major carrier.

Bob can be reached at P.O. Box 2677, Temecula, CA, 92593, with his office at 28910 Rancho California Rd., Suite 207, Temecula, CA 92590, (909) 266-8642, and fax, (909) 694-8330.

Nick can be reached at 8939 S. Sepulveda Blvd., Suite 110/107, Los Angeles, Ca 90045, (310) 670-4997, and fax, (310) 670-5087.

Both offices will fall under the direction of our Southern California Regional Manager, Robert Powers (805) 243-1000. The new Bragg offices will serve Riverside, San Bernardino, Los Angeles, Orange, and San Diego counties.

### The New and Improved Regs

The CAIIA has been in contact with the California Department of Insurance. Thanks to Peter Schifrin of Schifrin, Gagnon and Dickey, the DOI e-mailed us the following information about the Fair Claims Settlement Practices:

"We have proposed amendments to the current regulations (that became effective in October 2004) and are in the process of responding to public comments on the proposed amendments. We do not foresee the final rulemaking file being submitted to the Office of Administrative Law and approved by the Secretary of State by March. If you hold your training in March, the training should be on the current (10/04) regulations. The proposed amendments must be submitted to OAL for approval by July 2006."

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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](mailto:info@caiiia.org).

### CAIIA Newsletter

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Insurance Adjusters, Inc**

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■ **PRESIDENT'S MESSAGE**

EVERYBODY DOES IT. Of course we are talking about attending the mid-term meeting for your CAIIA. The meeting this year will be on Thursday and Friday, March 2<sup>nd</sup> and 3<sup>rd</sup>, at the beautiful Chukchansi Gold Resort and Casino in Coarsegold, California. Coarsegold is 35 miles north of Fresno, California on Highway 41. All rooms at this hotel face the beautiful Sierra Nevada Mountains.

The small towns around Chukchansi all have stories to tell. These, of course, include Coarsegold, Raymond and Oakhurst. Mariposa, a town with numerous antique shops, is located on Highway 41 approximately 40 minutes away. Of course the crown jewel is Yosemite National Park which is approximately 35 minutes away.

We will be gathering on Thursday evening, the business meeting to begin on Friday morning.

EVERYBODY DOES IT. We, of course, are talking about the Combined Claims Conference to be held Tuesday and Wednesday, March 14<sup>th</sup> and 15<sup>th</sup> at the beautiful Pacific Palms Conference Resort in the City of Industry, California.

You will note that the information is attached elsewhere in this Status Report. In reviewing the tracks for Property, Liability and Workers Compensation it would appear that their 18<sup>th</sup> annual conference will again be a success.

Of course your association will be maintaining a booth. Please feel free to stop by and say hello and volunteer to help man the booth if you have the time.

The hospitality from the vendors is outstanding and the committee certainly knows how to put on a top notch event.

EVERYBODY DOES IT - NOT. Recently I met with a contractor at a home that had sustained a very severe fire. The contractor questioned why I had not called him initially. Being as how he had only been on his own for three months it really should not have been too surprising why he had not been contacted. In actuality he contacted the insured when he read about the fire and soon became the insured's best friend.

However, he offered to me that if on any future fires I were to call him and he were to get the bid, that I would receive 5% of the bid. Of course I was taken aback. I could not believe that an inducement was being offered. Before addressing the issue to the carrier I spoke with three close personal friends with three separate insurance companies. I could not prove this bribe. This was just between the contractor and myself. I then addressed a letter to the contractor stating that I would not accept an inducement of 5%, but I would rather have him lower his bid by 5%.

When he finished the demolition of the house, sure enough, he sent me his bill and made a notation on it, "Less 5%."



Of course, when he made the offer to me he made the statement, "Everybody is doing it." Well, I beg to differ with the contractor. No one is doing it.

The subject of fraud, inducement, cheating your company if you are a company adjuster, or cheating a carrier if you are an independent adjuster is unthinkable

I cannot understand the mentality of anybody thinking that an adjuster would put his or her career on the line for a few dollars more than they are either being paid or charging for their services.

EVERYBODY DOES IT. Everyone should be proud of the profession that we have chosen and in dealing with people, especially during trying times. I am talking about the recent storm activity and the volume of claims that that has generated. Of course, we should not forget the devastation caused by the hurricanes.

However, this is our opportunity as professionals to deal with the public whether the outcome be for or against the insured and being able to explain why a surface water claim may not be covered. This sets us apart from other professions in that we are on that file from the date of the loss until final conclusions are reached.

I hope to see some of my fellow CAIIA members at the Mid-Term Conference and also hope to see our members as well as the claims handling personnel at the Combined Claims Conference.

**STEVE WAKEFIELD**

*President - CAIIA 2005-2006*

# ■ When You Need to Know What Really Happened

*Submitted by Garrett Engineers, Inc. - Forensic Division*

## ***Case of the Month: The Snowy Lodge***

This case involves a summertime campground facility built in 1951, and nestled high in the Sierra Nevada mountains. Over the winter, the camp was inaccessible and as the snow melted and the caretakers returned, they noticed an exterior wall in the main building that was bowed in by several inches. Eventually GEI was called in for an examination.

Our inspection discovered the following:

- A portion of the first story exterior wall of the main building had moved and cracked.
- The exterior stairway to the second floor of the main building had collapsed.
- The roof structure was sagging.
- The foundations were cracked.
- There was dry rot and insect damage at the base of some of the walls.
- A visit to the attic showed that there had been repairs to the roof structure in the past.
- The roof ridge beam in the vicinity of the earlier repairs was crushed.
- Some of the purlins in the roof structure also were broken.
- Some of the replacement posts in the attic had moved as well.

The next step was an evaluation of the observations. Starting at the foundations, there had been some soil movement over the past number of years, but it was not serious and was not the prime cause of the observed damages.

The dry rot and insect damage needed repairs, but also had not yet seriously compromised the strength of the walls. We discovered that there were really two separate issues—the wall and the roof, although both had been damaged by snow.

Researching the snow loads, we found that for the years of 1947 to 2004, the heaviest snowfall was in 1951-1952, with the maximum total annual snowfall of 444 inches. The greatest total monthly snowfall was in January 1952, and was 127 inches. We did not have all the data for the current snow season yet, but the incomplete data projected that the maximum total annual snowfall would be 157 inches. The deepest snowfall was recorded in January with an approximate depth of 70 inches. This indicated that there were heavier snowfalls prior and/or during the construction of the building. Also, the retrofit to the roof structure indicated structural problems with the roof structure were recognized and corrected in the past. We also detected evidence of multiple roofing materials. An excessive load from roofing materials, construction equipment and roofers walking on the roof during re-roofing can also damage a roof structure. Generally a building movement of this nature is caused by excessive or unbalanced snow load on the roof structure, and poor design/construction practices. In this case, it was not a single event, but the cumulative effect on a roof that was not designed/constructed to take the snow loads that it was annually subjected to.

The issue of the damaged wall was also interesting. There was another building a few feet away, whose peaked roof shed snow into the walkway between the two buildings. Over the course of the winter, the snow slid off the roof of the second building and filled up the walkway between the buildings. A winter caretaker reported that the snow was up to nine feet deep between the two buildings during the winter. The buildup of packed snow delivered a lateral thrust against the wall, which was never designed to resist such a pressure. The result was a series of broken 2 by 6 vertical wall studs and a five inch inward deflection in the wall.

The main building was in an eminent collapse mode. It lost its structural integrity and could not resist any new forces or loads. The weight of the building itself, more lateral movement in the wall, or a moderate wind/earthquake load would have caused the total collapse of the building. It was therefore a hazard to the public; and was "red tagged" until repairs could be accomplished.

While it was inconvenient for the camp operators to use alternate facilities, our engineer averted disaster by his timely analysis. If a thunderstorm had occurred while the lodge was filled with little campers, the story would not have had a happy ending. The protection of the public is a responsibility that our engineers take very seriously.

# ■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

## Duty of Care - Landowner - Independent Contractor's Employees

*Ray Kinsman v. Unocal Corporation*, California Supreme Court (December 19, 2005)

The Supreme Court has been defining over the last dozen years the circumstances of when an employee of an independent contractor, who has been injured on the job, may sue the hirer of that contractor. This case addressed the issue of when a landowner that hires an independent contractor is liable to an employee of the contractor who was injured as a result of hazardous conditions on the landowner's premises.

During the 1950's, Ray Kinsman worked on many occasions as a carpenter at Unocal's refinery. Mr. Kinsman was employed by Burke & Reynolds, an independent contractor, who was by hired by Unocal to perform scaffolding work during periods of shutdown and repair at the refinery. Mr. Kinsman built and dismantled scaffolds used by other trades. He was exposed to airborne asbestos, which was produced by the other trades. Years later, Mr. Kinsman developed mesothelioma. He sued product manufacturers and distributors as well as premises owners, such as Unocal. At trial, Mr. Kinsman argued that Unocal should have warned his employer of the dangers of the exposure to asbestos dust. Unocal defended that it complied with industry standards in providing protection to those it considered exposed to unsafe concentrations of asbestos dust. The jury awarded Mr. Kinsman \$3,000,000 in compensatory damages against Unocal.

Unocal appealed, contending the decision violated court decisions concerning the duties of a landowner to an independent contractor's employees. The Court of Appeal reversed and remanded the case for a new trial. The Supreme Court granted review.

In an unanimous Supreme Court decision, the reversal by the Court of Appeal was affirmed. The Supreme Court reviewed all of the cases dealing with the duties of a landowner to an employee of an independent contractor. The court decisions have held that an employee cannot recover under a premises liability theory unless the landowner affirmatively contributed to the employee's injury. The Court noted that when a landowner hires an independent contractor, generally he delegates to the independent contractor responsibility for supervising the job, including looking after the employees' safety. This includes taking proper precaution to protect against obvious hazards in the workplace. The Court applied that reasoning to this case. Where there is a known safety hazard on a hirer's premises that can be addressed through reasonable safety precautions on the part of the independent contractor, the hirer has delegated responsibility to take such precautions to the

contractor, and thus is not liable to the contractor's employee if the contractor fails to do so. The Court found no reason why that rule should not exist in a situation such as presented by the Unocal case.

If the hazard was concealed from the contractor, but known to the landowner, the Court stated that a different rule would apply. The landowner cannot delegate to the contractor responsibility for the safety of the contractor's employees because the landowner failed to disclose critical information needed to fulfill that responsibility. In that situation, the landowner would remain liable to the contractor's employee if the employee is injured by the undisclosed hazard. Thus, the hirer, as landowner, could be independently liable to the contractor's employee, even if it does not retain control over the work, if it knows, or reasonably should know, of a concealed pre-existing hazardous condition on its premises and the contractor does not know or could not reasonably ascertain the condition, and the landowner fails to warn the independent contractor. The Court stated that a landowner would not be liable when the contractor failed to inspect the premises for concealed conditions. Further, a landowner who does not retain control of the property is not liable for an injury inflicted by an independent contractor or its employees on the employee of another independent contractor.

In the trial court, a jury instruction had been given which imposed liability on Unocal if it was found to be negligent in the management of their property. The instruction did not make clear that the hazard had to be unknown and not reasonably ascertainable by the independent contractor that employed Ray Kinsman. Thus, the jury was improperly instructed. The Court concluded that the instruction was prejudicial. The jury made no finding about whether Mr. Kinsman's employer or another contractor working at the site knew or should have known of the hazard, or whether Unocal knew or should have been aware that these contractors did not know of the hazard. A finding that these contractors did know of the hazard would relieve Unocal of liability. The decision as to whether a hazard was concealed was a factual matter. The Court concluded that a properly instructed jury could have concluded that Unocal was not liable because the contractors knew, or should have known, of the hazard.

Therefore, the decision was reversed and remanded to the Court of Appeal for further proceedings consistent with the opinion.

### COMMENT

This is further refinement of the Privette rule, which sets a high standard for imposing liability on landowners for concealed hazards which cause injury to an independent contractor's employee.

# The Annual Stella Awards

Time once again to review the winners of the Annual "Stella Awards". The Stella Awards are named after 81 year-old Stella Liebeck who spilled hot coffee on her self and successfully sued McDonald's in (NM). That case inspired the Stella Awards for the most frivolous, ridiculous, successful lawsuits in the United States. Here are this year's winners:

**5<sup>th</sup> Place (tie):** Kathleen Robertson of Austin, Texas, was awarded \$80,000 by a jury of her peers after breaking her ankle tripping over a toddler who was running inside a furniture store. The owners of the store were understandably surprised at the verdict, considering the misbehaving little toddler was Ms. Robertson's son.

**5<sup>th</sup> Place (tie):** 19-year-old Carl Truman of Los Angeles won \$74,000 and medical expenses when his neighbor ran over his hand with a Honda Accord. Mr. Truman didn't notice there was someone at the wheel of the car when he was trying to steal his neighbor's hubcaps.

**5<sup>th</sup> Place (tie):** Terrence Dickson of Bristol, Pennsylvania was leaving a house he had just finished robbing by way of the garage. He was not able to get the garage door to go up since the automatic door opener was malfunctioning. He couldn't re-enter the house because the door connecting the house and garage locked when he pulled it shut. The family was on vacation, and Mr. Dickson found himself locked in the garage for eight days. He subsided on a case of Pepsi he found, and a large bag of dry dog food. He sued the homeowner's insurance claiming the situation caused him undue mental anguish. The jury agreed to the tune of \$500,000.

**4<sup>th</sup> Place:** Jerry Williams of Little Rock, Arkansas, was awarded \$14,500 and medical expenses after being bitten on the buttocks by his next door neighbor's beagle. The beagle was on a chain in its owner's fenced yard. The award was less than sought because the jury felt the dog might have been just a little provoked at the time by Mr. Williams who had climbed the fence into the yard and was shooting it repeatedly with a pellet gun.

**3<sup>rd</sup> Place:** A Philadelphia restaurant was ordered to pay Amber Carson of Lancaster, Pennsylvania, \$113,500 after she slipped on a soft drink and broke her coccyx (tailbone). The beverage was on the floor because Ms. Carson had thrown it at her boyfriend 30 seconds earlier during an argument.

**2<sup>nd</sup> Place:** Kara Walton of Claymont, Delaware, successfully sued the owner of a night club in a neighboring city when she fell from the bathroom window to the floor and knocked out her two front teeth. This occurred while Ms. Walton was trying to sneak through the window in the ladies room to avoid paying the \$3.50 cover charge. She was awarded \$12,000 and dental expenses.

**1<sup>st</sup> Place:** This year's runaway winner was Mrs. Grazinski of Oklahoma City, Oklahoma. Mrs. Grazinski purchased a brand new 32-foot Winnebago motor home. On her first trip home, (from an OU football game), having driven onto the freeway, she set the cruise control at 70 mph and calmly left the drivers seat to go into the back & make herself a sandwich. Not surprisingly, the RV left the freeway, crashed and overturned. Mrs. Grazinski sued Winnebago for not advising her in the owner's manual that she couldn't actually do this. The jury awarded her \$1,750,000 plus a new motor home. The company actually changed their manuals on the basis of this suit, just in case there were any other complete morons around.

## Harvard Study: Carpal Tunnel Not Caused by Computer Use

December 15, 2005

A new report from Harvard Medical School refutes the common assumption that computer use causes carpal tunnel syndrome.

Instead, says this report edited by Harvard-based hand experts, carpal tunnel syndrome is caused by the compression of the median nerve in the wrist. This compression may occur because of heredity, body weight, fracture, or even pregnancy—but not computer use.

This 40-page report, "Hands: Strategies for strong, pain-free hands," also explains the many causes of hand pain and describes the exercises, therapies, and medications used to treat them.

Carpal tunnel syndrome, a condition that affects between 2 percent and 3 percent of the population, occurs when one of the three major nerves that travel from the spinal cord down to the hand becomes "pinched." It affects nearly twice as many women as men. A procedure to ease this nerve disorder is one of the most common surgeries done in the United States, with more than 200,000 performed each year.

Recent research has found that heavy computer use—up to seven hours a day—does not increase risk for carpal tunnel syndrome. However, improper computer use and other workplace conditions can contribute to a type of disorder known as repetitive stress injury.

Carpal tunnel syndrome is in fact not a repetitive stress injury, though it is often incorrectly described as one, says the Harvard report.

The report also covers such topics as arthritis of the hand joints, Raynaud's syndrome, finger fractures, dislocation, accidental amputation, trigger finger, tennis elbow, lupus, and gout.

### CAIA Calendar

#### Combines Claims Conference

March 14-15, 2006

Contact Brenda at 888-811-6933

#### Mid-Winter Meeting

March 2 & 3, 2006

Contact Steve Wakefield at 559-485-0441



**CAIIA REGISTRATION FORM**  
 California Association of Independent Insurance Adjusters  
**ANNUAL MID-TERM BUSINESS MEETING - March 2-3, 2006**  
 Chukchansi Gold Resort & Casino  
 711 Lucky Lane, Coarsegold, CA 93614  
 (559) 692-5200 Fax (559) 692-5330 [www.chukchansigold.com](http://www.chukchansigold.com)  
 CAIIA Room Rate \$89 Single/Double  
 Group I.D. # 2042

Attendees must make their own hotel reservations. Hotel Cut-off Date is Thursday, February 16, 2006

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 each registrant, except for spouses.**

EVENT	COST	#TICKETS
Registration Package - members with spouse/mate	\$ 75.00	_____
Registration Package - members without spouse*	\$ 50.00	_____

\*Spouse/mates includes Erna's Elderberry House or Ahwahnee Hotel Tour in Yosemite Valley

SCHEDULED EVENTS	You	Mate	Please make your checks payable to CAIIA
3/2 - 6:00 P.M. Registration/Hosted Reception	[ ]	[ ]	or pay by credit card. Mail or E-Mail Registration form and payment to: Steve Wakefield Ronald Bolt & Associates 414 N. Broadway, Fresno, CA 93701 <a href="mailto:boltadj@msn.com">boltadj@msn.com</a>  Credit Card: AMEX ___ VISA ___ M/C ___  Cardholder _____  Card No. _____  Expiration Date: _____  Signature: _____
3/2 - 7:00 P.M. Dinner	[ ]	[ ]	
3/3 - 8:00 A.M. Continental Breakfast	[ ]	[ ]	
3/3 - 9:00 A.M. Business Meeting	[ ]	[ ]	
3/3 - 12:00 P.M. Lunch	[ ]	[ ]	
3/3 12:00 P.M. During and following lunch, CAIIA members will be entitled to a 2006 Fair Claim Act Recertification session, included in the Registration Package at no extra charge.			
Any Questions, call:			
Steve Wakefield (559) 485-0441 (559) 485-0444			

**Cut-off date is February 27, 2006. Any registration after that date is subject to a \$35.00 late fee.**



18th Annual Combined Claims Conference - March 14-15, 2006

Education - Passport to Success

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, MCLC, CPJ and California Department of Insurance

Tuesday, March 14, 2006

Wednesday, March 15, 2006

Registration grid for Tuesday, March 14, 2006. Sessions include: General Session Negotiations (9:00 am - 10:30 am), Track 1 - Property (11:00 am - Noon), Track 2 - Liability (11:00 am - Noon), Track 3 - Workers' Compensation (11:00 am - Noon), Track 1 - Property (1:30 pm - 2:30 pm), Track 2 - Liability (1:30 pm - 2:30 pm), Track 3 - Workers' Compensation (1:30 pm - 2:30 pm), General Session Screaming Callers (3:00 pm - 4:30 pm).

Registration grid for Wednesday, March 15, 2006. Sessions include: General Session Claim File Notes Your Best Friend or Worst Enemy!? (9:00 am - 10:30 am), Track 1 - Property (11:00 am - Noon), Track 2 - Liability (11:00 am - Noon), Track 3 - Workers' Compensation (11:00 am - Noon), Track 1 - Property (1:30 pm - 2:30 pm), Track 2 - Liability (1:30 pm - 2:30 pm), Track 3 - Workers' Compensation (1:30 pm - 2:30 pm), General Session Vehicle Additional Equipment Demonstration (3:00 pm - 4:30 pm).

P.O. BOX 7204, SAN JOSE, CA 95150-7204 PHONE: (888) 811-6933 • FAX: (888) 969-6922

Please fill out this registration form completely One registration form per person. Photocopies accepted
If paying by check, mail with the appropriate fee to the above address. If paying by credit card, either mail or fax with appropriate authorization for payment to the above address or fax number.
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.

Name \_\_\_\_\_ Title \_\_\_\_\_
Company \_\_\_\_\_ Badge Name \_\_\_\_\_
Street Address \_\_\_\_\_
City, State, Zip \_\_\_\_\_ Phone \_\_\_\_\_
E-mail \_\_\_\_\_ Fax \_\_\_\_\_

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

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

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

Table with 2 columns: Registration Type, Rate. Rows: Two Day Conference Registration (\$150.00), One Day (Tuesday, March 14, 2006) (\$75.00), One Day (Wednesday, March 15, 2006) (\$75.00).

Table with 2 columns: Registration Type, Rate. Rows: Two Day Conference Registration (\$400.00), One Day (Tuesday, March 14, 2006) (\$200.00), One Day (Wednesday, March 15, 2006) (\$200.00).

Conference Fees: \$ \_\_\_\_\_ Payment Method [ ] Check [ ] Visa [ ] MasterCard
Credit Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_
Billing Address \_\_\_\_\_
Name on Card \_\_\_\_\_ Signature \_\_\_\_\_

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, 2006. Individuals who do not attend or do not cancel in advance are liable for the entire conference fee. Cancellations must be in writing.

WWW.COMBINEDCLAIMS.COM



## EXECUTIVE OFFICE DUTY DISTRIBUTION AND COMMITTEES

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