

Save the Date

On February 25, 2010, the CAIIA in collaboration with American Technologies, Inc. and Forensic Analytical is presenting a comprehensive seminar on "Smoke and Soot Damage Assessment and Abatement." Independent Adjusters and insurance industry personnel are invited to this FREE seminar. The course will be held at the American Technologies, Inc. Corporate Office at 210 Baywood Avenue, Orange, CA. 92865 Registration will start at 8 am, and the program will begin promptly at 8:30 am and end at 11:50 am. Lunch/ drinks will be provided.

Space is limited so RSVP early to secure your seat at this very topical presentation.

Linda Doi-Scheid
909-208-0278 or ldoi-scheid@amer-tech.com

This course will also be offered in Northern California in the very near future.

***** This course is pending DOI course approval for 3 Continuing Education Hours for Independent Insurance Adjusters. *****

***** The course may be rejected and no credit given. *****

CAIIA Mid-Term is Coming

The Mid Term meeting of the CAIIA is scheduled for
April 30, 2009

at the

Universal City Hilton, Los Angeles, CA.

Please look for the application to attend in the next two issues of the Status Report or on line at www.caiia.com.

There will be 4 hours of Continuing Education for your California DOI IA license.

Currently we are awaiting approval from the Department of Insurance for the CE credit.

We will be going to the Magic Castle in Hollywood, too.

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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.

CAIIA Newsletter

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of Independent
Insurance Adjusters, Inc**

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PRESIDENT'S MESSAGE

THE CALIFORNIA CLAIMS EDUCATION EXPLOSION

Since implementation of the new DOI Continuing Education Requirements (especially over the last quarter), we have seen an unbelievable proliferation of educational offerings from a variety of sources.

On-line courses, law firms, contractors, third party administrators, claims association and CAIIA all offer a variety of courses intended to be approved by the DOI. Ironically, the increased number of other entities engaged in presenting education classes has resulted in almost daily contacts to us from these types of firms seeking to partner with CAIIA in this area. Contacts from disparate organizations serves to validate the great job CAIIA has historically done in California claims education.

Attendees to classes presented by CAIIA can be assured our education committee makes absolutely certain our offered courses are properly vetted and approved by the DOI. They've done their homework. The committee is currently working on scheduling CAIIA seminars for the current year. This includes the most popular SEED and DOI Regulations seminars, and the April Midterm CAIIA Convention. The Combined Claims Conference, a long time partner of CAIII is offering 9 units of continuing education



credits at their upcoming convention. As with CCC we will advise our members of courses possibly beneficial for our members.

Because of this expansion of claims education in California, our goal is this year is to have upcoming classes relevant to all claims lines. As reflective of our membership and customers, we recognize there are many issues common to property, casualty, worker's compensation, and other claims specialists. To achieve this, we are requesting your feedback on what courses you would like offered. Moreover, we seek experienced claims individuals like you to serve as instructors and/or organizers. CAN WE COUNT ON YOU? If so, please contact one of our education committee members.

SAM HOOPER

President - CAIIA 2009-2010

General Litigation Newsletter

Submitted by Tharpe & Howell - Offices throughout the west

Insured's Failure to Abide By "Cooperation Clause" Can Lead To Claim Denial

In *Rajwinder Kaur v. Fire Insurance Exchange*, the Fifth District Court of Appeal recently upheld a Jury's finding that an insured's failure to cooperate under terms of an insurance contract justifiably caused claim denial.

In this case, insured Kaur's home was destroyed by fire which was believed to have been caused by arson. One of the significant issues in the claim investigation was whether the appellant/insured had intentionally caused the fire – or had intentionally arranged for the destruction of the home and its contents.

On September 29, 2005, Fire Insurance Exchange "FIE" sent the insured a letter requesting various items, including documentation about her financial status and personal and business telephone bills. However, the documents were not provided and FIE renewed its request for the items on several more occasions over a seven month period. The requested documents were still not produced and FIE subsequently denied the claim.

One of the grounds stated for the denial was that the policy contained express provisions requiring the insured to produce documents – but that she had not submitted the requested materials. The denial letter also quoted language from the policy which stated FIE could not be sued unless there had been full compliance with the policy terms. The denial letter also stated if the insured believed the decision was incorrect, or wished FIE to consider additional information or documentation, the insured could forward a written statement outlining the basis for her position and any additional information or documentation she wished FIE to consider. The insured did not contact FIE or submit any additional documentation, and instead filed suit against FIE shortly thereafter.

After a month long trial, a Jury ruled in favor of FIE and expressly found the insured had failed to comply with the "cooperation" clause of the policy which required the insured to provide FIE with the records and documents requested. The Jury also made a special finding that the insured's failure to provide such information and documentation had caused prejudice to FIE's handling of the claim. The insured timely appealed.

During the appeal, counsel for the insured argued that, with regard to the "cooperation" clause, the insured *had* satisfied the clause by providing the documents sought during the discovery phase of the case against FIE. He also argued that, even if the insured had breached the cooperation clause by failing to provide the requested documents *before* filing suit against FIE, the breach was not prejudicial because the insured did eventually provide the documents to FIE during the discovery phase of the case, and before trial.

The Court of Appeal noted the purpose of the cooperation clause is to enable the insurer to obtain the information it needs to decide whether to pay the claim. By suing FIE for non-payment of the claim **before** providing it with the documentation requested (which the insured was contractually obligated to provide), the insured frustrated the purpose of the cooperation clause itself. The Court also found the insured's failure to provide the documents when requested, and FIE's having to pay counsel, in litigation, to obtain documents through civil discovery, was prejudicial to FIE. The Court opined if it were to conclude otherwise, it would essentially be eviscerating the cooperation clause from the policy, since there would be no adverse consequence to the insured for non-compliance. The Jury's verdict was affirmed.

Full Medical Billing May Be Recovered Despite Downward Adjustment By Insurance Provider

In *Howell v. Hamilton Meats & Provisions, Inc.*, the Court of Appeal for the Fourth District, Division 1, located in Sand Diego, ruled a personal injury plaintiff with private health care insurance is entitled, under the collateral source rule, to recover the full reasonable amount of past medical expenses incurred, *regardless* of whether such amounts were ever paid. In short, it concluded such a plaintiff can recover the full amount *billed* by the health care provider (provided those billings are reasonable), even if that amount is never paid, and even if the health care provider will never seek to recover it.

It has accordingly issued a decision which appears to be at odds with the ruling of the court in *Hanif v. Housing*

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General Litigation Newsletter

Submitted by Tharpe & Howell - Offices throughout the west

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Authority, 200 Cal.App.3d 635 (1988), or at least how it has been routinely interpreted by other courts, namely to require the trial court to limit the amount of the plaintiff's special damages for medical expenses to the amount *actually paid* instead of the amount billed.

More importantly, the Fourth District Court of Appeal has decided to publish the Howell decision. Because published appellate decisions are binding authority on every Trial Court in the state, and with rare exception apply retroactively, this decision may affect the rulings California Trial Courts make in pending personal injury cases.

A petition for review of the *Howell* decision will probably be filed in the Supreme Court, so there is chance that *Howell* may eventually be overturned. However, it must be borne in mind that such petitions are rarely granted and, even if the high court were to grant review, it could nonetheless decide to affirm the decision – causing insurers and counsel for their insured to re-evaluate exposure value and address the risk that all medical specials will be recoverable at trial.

Intentional Acts of Insureds' Resident Relative May Preclude Coverage

In *Century National Insurance Company v. Jesus Garcia*, the California Court of Appeal has opined the intentional acts of an insured's resident relative can preclude coverage.

In this case, Jesus Garcia, Sr. and his wife Theodora were Century National's named insureds under a fire insurance policy on their home. On May 2, 2007, a fire occurred at the home, and on May 3, 2007, they filed a claim with Century National.

The insurance adjuster inspected the home and suspected arson. Century national retained a qualified fire investigator who determined the fire had started in the bedroom of the Garcia's son, Jesus, Jr., shortly after he had been in the bedroom. The investigator ascertained the fire was intentionally set with the use of a small amount of accelerant applied to the floor and bed that was ignited with a small open flame, such as would be found on a cigarette or match. Century National concluded the fire was a result of arson. Jesus, Jr., subsequently pleaded no contest to the charges and was sentenced to five years.

At the time of the fire, the Garcias were insured by Century National under a policy which excluded coverage for "Intentional Loss, meaning any loss arising out of an act committed by or at the direction of any insured having the intent to cause a loss" and also excluded coverage for losses caused by "Dishonesty, Fraud or Criminal Conduct of any insured." An "insured" was defined as "you and the following persons if permanent residents of the residence premises . . . Your relatives . . ."

Century National filed a Complaint for Declaratory Relief, seeking a declaration that it had no duty to pay the claim because the loss resulted from the intentional or criminal act of an insured. Shortly thereafter, the Garcias filed a Cross-Complaint for breach of contract and bad faith. The Garcias alleged Jesus, Jr. was not a named insured on the policy and did not have an insurable interest in the property, although they acknowledged he was their son and lived at the property at the time of the loss. The Garcias further alleged Century National's definition of intentional loss violated Insurance Code Section 2071 because the policy used the words "any insured" rather than "the insured", and thereby denied the Garcias insurance coverage.

The Trial Court determined the policy defined "any insured" to include relatives of the insured; and that courts generally interpret policies which exclude coverage for criminal or intentional acts to exclude coverage of innocent co-insureds. The Court of Appeal affirmed, finding that Century National's policy language precluded recovery for the subject fire; and that the relevant policy language was not prohibited by the Insurance Code.

Department of Insurance Curriculum Board

By Helene DalCin - DalCin Claims Consulting

I attended the quarterly meeting of the Department of Insurance Curriculum Board on January 14, 2010. The previous meeting's minutes contained a reminder regarding the "Changes of License Renewals Notice" that was sent to licensees by the DOI. After December 31, 2009, the DOI will no longer mail renewal notices to individuals and business entities licensed through the DOI's Producer Licensing Bureau. The CAIIA strongly urges all licensees to review your licensing information on the DOI website through the "Updating Licensee Information" option to verify that you have provided your correct e-mail address. It is the DOI's position that it is the responsibility of the licensee to renew his or her license in a timely manner whether or not a renewal notice is received.

The DOI provides a "Free Application Online Renewal Service" that a licensee can access through the DOI website. This online program will guide the licensee, step-by-step, through the renewal process by asking the same questions that are stated on the traditional mail-in renewal application. The licensee will be able to answer the questions online, update contact information (address, e-mail, etc.), and submit a credit card (American Express, VISA or Mastercard) or debit card (with VISA or MasterCard logo) payment. There is no additional charge for the use of this service. Credit and debit card transactions are encrypted and no one but the licensee and his or her credit or debit card company will have access to the credit card number. The licensing record is updated on the CDI's Web site and the renewed license can immediately be printed using the "Obtain Your License Online" service.

A licensee may renew a license within 90 days prior to your renewal expiration date, which is May 31, 2010, for Independent Insurance Adjusters.

Those Independent Adjusters who meet the following criteria may qualify for an exemption from the DOI's Continuing Education Requirements: if you are 70 years of age or older; and have 30 continuous years as a licensee in good standing in the State of California.

Any licensee that maintains eligibility for 30 continuous years without any disciplinary action is considered to be in good standing. Eligibility is maintained by renewing a license within one year.

Licensees with a break in their license caused by late renewals or transferring between employers may still qualify for the exemption.

If you believe that you qualify for the CE exemption, please contact the CDI's Producer Licensing Bureau at 1-800-967-9331.

The updated version of the "Online Prelicensing and Continuing Education Regulations" was submitted to the Office of Administrative Law on January 11, 2010. It is anticipated that final implementation of these regulations will occur by the summer of 2010.

Finally, beginning with the licensing period June 1, 2010 through May 31, 2012, Independent Insurance Adjusters are required to complete 3 CE hours on Ethics.

Insurance Commissioner Poizner Announces Arrest of San Jose Man for Allegedly Ditching Car in Mexico, Reporting it Stolen, Filing False Insurance Claim

California Insurance Commissioner Steve Poizner today announced that Severiano Becerra, 48, of San Jose was arrested Jan. 12 in San Jose on suspicion of felony auto insurance fraud. If convicted, Becerra could face five years in prison. He is being held on \$20,000 bail.

"Auto insurance fraud continues to cost residents of this state millions of dollars and rates continue to go up for drivers as we battle this crime," Commissioner Poizner said. "But it's a battle we will never back down from and those who commit these crimes will face justice."

A California Department of Insurance (CDI) Urban Auto Fraud Task Force investigation alleges that on Nov. 27,

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Weekly Law Resume

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

Property Insurance - Appraisal - Appraisers

Peter Mahnke, et al. v. The Superior Court of Los Angeles County Court of Appeal, Second District (December 21, 2009)

Under California law, fire policies provide for a three-member panel to adjudge the amount of loss, two of which members are selected by the parties, and the third selected by the parties' appraisers. This case addressed the disclosure requirements of the appraisers and when a party appraiser may be disqualified for cause.

After the Mahnke's home was severely damaged in 2008 wildfires, the California Fair Plan Association ("CFPA") adjusted the loss. The Mahnkes did not agree with the assessment and elected to proceed under the appraisal provisions of the policy. The Mahnkes chose their appraiser, as did the CFPA. The CFPA designated appraiser indicated that he was serving as an appraiser in another pending action. The Mahnke appraiser disclosed he was currently serving as a construction expert for another client of the law firm representing the Mahnkes.

CFPA demanded that the Mahnkes' appraiser withdraw. The Mahnkes refused. The Mahnkes filed a petition with the court, seeking appointment of a neutral umpire. Two days later, CFPA filed a petition to disqualify the Mahnkes' appraiser. The trial court granted the petition. The Mahnkes petitioned the Court of Appeal for a Writ of Mandate, requesting that the trial court order be vacated.

The Court of Appeal granted the petition. Under California procedure, the insured and the insurer select appraisers, who then select a disinterested umpire. Disagreements between the appraisers are settled by the umpire. The Court noted that Code of Civil Procedure § 1281.9 required disclosure of all matters that could cast doubt upon a proposed neutral arbitrator's ability to be impartial. In examining the disclosure statute, the Court noted that in 2001, it was amended to make the disclosure provisions apply only to the proposed neutral arbitrator. The Court held that these standards do not apply to the party appraisers selected to decide the issue. Only the proposed neutral is subject to the disclosure and disqualification requirements. There is, therefore, no unlimited right of disqualification for disclosures made by party appraisers.

However, the Court held that party selected appraisers may be disqualified when a substantial business relationship exists between the appraiser and a party. The Court held in this case the insured's appraiser was not disqualified merely by reason of the fact he was to testify as an expert witness on another matter for the insured's counsel. He was otherwise qualified. He had a broad client base. There was nothing that warranted his disqualification.

The Court therefore granted the peremptory writ, ordering the court to vacate its order granting the petition to disqualify the insured's appraiser and to enter a new order denying the petition.

COMMENT

The rationale behind the Court's decision was that the appraisal proceedings under fire policies are intended to be informal and expeditious in order to resolve the claim. Thus, a relaxed standard as to the appointment of the party appraisers seemed appropriate.

Insurance Commissioner Announces Arrest . . .

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2008, Becerra drove his Dodge Dakota pickup truck into Mexico and purposefully left the vehicle in that country and returned to San Jose. On Dec. 17, 2008, Becerra reported the vehicle as stolen to the San Jose Police Department. Becerra claimed the truck was stolen the same day from a shopping center parking lot in San Jose. Becerra then filed a claim with Infinity Insurance Co. after filing the police report.

Becerra signed and dated a stolen vehicle report taken by San Jose Police. Becerra also signed and dated an affidavit of vehicle theft that was notarized by Infinity Insurance. Both forms were signed under penalty of perjury. In both reports, Becerra allegedly lied about the circumstances of how his vehicle disappeared.

Infinity Insurance Co. became suspicious of the claim and asked CDI to start its own investigation. Becerra confessed when confronted with evidence that refuted his version of events and admitted he intentionally drove his Dodge Dakota into Mexico and left it there. Becerra also provided a written confession.

The Urban Organized Automobile Fraud Insurance Task Force is made up of investigators from CDI, the California Highway Patrol and the Santa Clara County District Attorney's Office.



EDUCATION - REACHING FOR THE STARS

Attendee Registration Form

April 5-7, 2010 Long Beach Convention Center * Long Beach, California

Questions, please call: 888.811.6930 or email: info@combinedclaims.com

REGISTRATION INFORMATION:

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

Name: _____

Title: _____

Company: _____

Address: _____

City, State, Zip: _____

Email: _____

Phone: _____

Fax: _____

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

CONFERENCE FEES:

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

- Adjuster Insurance Carrier Risk Management
- Appraiser Private Investigator Attorney

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

- Two Day Conference Registration \$190.00
- One Day (Tuesday, April 6, 2010) \$95.00
- One Day (Wednesday, April 7, 2010) \$95.00

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, April 6, 2010) \$200.00
- One Day (Wednesday, April 7, 2010) \$200.00

Please send me golf tournament information.

PAYMENT - CHECKS, AMERICAN EXPRESS, MASTER CARD AND VISA ACCEPTED.

Mail form and check or credit card information to: CCC - 1880 Radcliff Ct - Tracy, CA 95376 or by fax to 888.969.6922

By Credit Card Authorization for payment in the amount of \$ _____
Credit Card Number: _____ Exp Date: _____ Security Code: _____

Billing Address: _____

Name on Card: _____

By Check Check Number: _____ in the amount of \$ _____

QUESTIONS, PLEASE CALL: 888.811.6930 OR EMAIL: INFO@COMBINEDCLAIMS.COM

SESSION SIGN-UP:

For purposes of seating/handouts, please select the sessions and events you plan on attending.

TUESDAY, APRIL 6, 2010

9-10:15AM

- GENERAL SESSION - The Star in You

11-NOON

- Track 1 Percutaneous Discectomy
- Track 2 Plain English Guide to Soil Problems
- Track 3 Insurance Claim and Fraud Trends

NOON-1:30PM

- Lunch in the Exhibit Hall
Keynote Speaker: Ed Hochuli, NFL Referee

1:30-2:30PM

- Track 1 Recent Developments in California Law
- Track 2 Ethical Decision Making
- Track 3 The Ideal Interview

3:15-4:15PM

- Track 1 A Primer on Racially-Based Lawsuits
- Track 2 Subrogation Potential by First Responders
- Track 3 Auto Accident Reconstruction

WEDNESDAY, APRIL 7, 2010

9-10:00AM

- Track 1 Liability Claims Involving Public Entities
- Track 2 Anatomy of an Arson
- Track 3 Increasing Salvage Returns

10:45 - 11:45AM

- Track 1 California Fair Claims Practices Act
- Track 2 Water Damage Restoration
- Track 3 A Mock Trial That's Out of this World - Part 1

11:45AM - 1:30PM

- Lunch with award presentations in the Exhibit Hall

1:30 - 2:30PM

- Track 1 Developing Good Team Communication
- Track 2 Vendors and Experts on Property Claims
- Track 3 A Mock Trial That's Out of this World - Part 2

2:45 - 3:45PM

- CLOSING SESSION - Insurance Fraud Arson
Special Prize Drawing for Attending This Session

Some Small Truths

- 1) Nothing sucks more than that moment during an argument when you realize you're wrong.
- 2) I totally take back all those times I didn't want to nap when I was younger.
- 3) There is a great need for sarcasm font.
- 4) How the hell are you supposed to fold a fitted sheet?
- 5) I would rather try to carry 10 plastic grocery bags in each hand than take 2 trips to bring my groceries in.
- 6) MapQuest really needs to start their direction on #5. Pretty sure I know how to get out of my neighborhood.
- 7) Obituaries would be a lot more interesting if they told you how the person died.
- 8) I can't remember the last time I wasn't at least kind of tired.
- 9) Bad decisions make good stories.
- 10) You never know when it will strike, but there comes a moment at work when you've made up your mind that you just aren't doing anything productive for the rest of the day.
- 11) I'm always slightly terrified when I exit out of Word and it asks me if I want to save any changes to my ten page research paper that I swear I did not make any changes to.
- 12) I hate when I just miss a call by the last ring (Hello? Hello? Damn!), but when I immediately call back, it rings nine times and goes to voicemail. What'd you do after I didn't answer? Drop the phone and run away?
- 13) I hate leaving my house confident and looking good and then not seeing anyone of importance the entire day. What a waste.
- 14) As a driver, I hate pedestrians, and as a pedestrian I hate drivers. But no matter what the mode of transportation, I always hate cyclists.
- 15) I keep some people's phone numbers in my phone just so I know not to answer when they call.
- 16) I disagree with Kay Jewelers. I would bet on any given Friday or Saturday night more kisses begin with Miller Lites than "Kay".