CAIIA Status Report

APRIL 2006

Insurance Commissioner John Garamendi Announces New Workers' Compensation Regulations Requiring Certification Of Claims Adjusters And Medical Bill Reviewers

Effective February 22, the new regulations require all insurers to meet minimum standards of training and/or experience and show certification to the Department by July 1

SACRAMENTO - Insurance Commissioner John Garamendi announced new workers' compensation regulations Tuesday that will require all insurers to submit certification forms that verify that claims adjusters and medical bill reviewers meet the new minimum standards of training and/or experience.

Effective Wednesday, February 22, the new regulations are designed to help speed appropriate care to injured workers and eliminate dysfunction that adds cost to the system. The new regulations complement the workers' compensation reforms of 2004 and are a result of AB 1262 (Matthews).

"These measures will ensure that the people who process claims have the knowledge and experience to make sure that our injured workers are not harmed by needless delays within the system," said Insurance Commissioner John Garamendi. "This is the first time standards have been established for the handling of workers' compensation claims. It is yet another important step in the overall reform of California's workers' compensation system."

All workers' compensation insurers, including insurance companies, self-insured employers and third-party administrators, must certify annually to the Insurance Commissioner on or before July 1 that their staff are trained, in training or qualified with experience that meets the standards required by the new regulations. For those who do not meet the experience requirements, training courses are required.

A complete summary of the regulations can be found on the DOI website.

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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**

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CAIIA Newsletter
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■ PRESIDENT'S MESSAGE

It was an E-ticket ride. It involved mystery, suspense, theft, and cannibalism. Of course I am talking about our Mid-Term meeting at Chukchansi Gold Resort and Casino.

It all started off innocently enough. A round of golf with Doug Jackson, Mike Yuhas and myself near Oakhurst followed by a pre-meeting gathering at 6 o'clock of all in attendance.

A limousine showed up at 8:30 Friday morning to take seven significant others on a "three hour tour." The tour was supposed to take the ladies to the historic Ahwahnee Hotel for lunch. We heard that, unfortunately, snow was falling above Oakhurst. The alternate plan was to go to Mariposa then back through Northfork and Oakhurst for lunch.

During the business meeting one of our ever observant members noticed that it was snowing in Coarsegold, elevation 2,200 feet. No way would the ladies be able to get into the Yosemite Valley.

Then at about 12:15 the call came. They had made it to the Ahwahnee Hotel. We had by that time heard that Highway 41 above Oakhurst was closed. Past President Lee Collins left to join Susan at the Ahwahnee.

Of course, as we started the Recertification Seminar some of us wondered how the ladies were going to get home. There was a rumor that they would have to go through El Portal above Mariposa. Other thoughts turned to life insurance, filing a missing persons report, etc. Then there was the phone call at 2:30 to advise that they were leaving the Ahwahnee Hotel.

Recertification was over and all had left. It was still snowing at Chukchansi. Then at about 3:30 we got another phone call. They were in Mariposa. Fortunately it had stopped snowing at Chukchansi and the sun was out. Past Presidents Doug Jackson and Sterrett Harper left to join their wives in Oakhurst.

Finally at about 5 o'clock four wives returned. One wife stayed at the Ahwahnee Hotel and two others were dropped off in Oakhurst.

We, the four remaining significant others, knew that the ladies would either be tired and upset or tired and happy. When they unloaded from the limousine at they were tired and happy.

I jokingly remarked to Gayle Vaughan, "Seven of you left and only four of you returned." She quickly replied, "We were hungry."

To finish this story, on Tuesday my wife handed me a napkin, a cup, and a saucer that were lifted from the hotel by Elaine Jackson. The items have been returned. No Sheriff's report was filed.

Suffice to say that the Mid-Term was a success. To draw an analogy to a claim, how many times have the best laid plans taken several turns? This can be an "easy" adjustment that, if anything can go wrong, it will go wrong.

My wife Kathy was asked to plan the wives' tour for our October convention in Sacramento. Discussions of a raft tour down the delta were quickly put to rest.

Wishing all Independent Adjusters a prosperous April with many claims. Have fun doing your job!

STEVE WAKEFIELD
President - CAIIA 2005-2006

CLAIMS ADJUSTERS

The unheralded members of a disaster team

Published: February 26, 2006

By Julia Hollister

Victims of the devastating duo hurricanes – Katrina and Rita – know first hand the importance of insurance claims adjusters. "Those men and women were on the front lines with money to get people's lives back together," reports Sterrett Harper, executive director of the California Association of Independent Insurance Adjusters in Burbank.

"There is a wealth of employment opportunities mainly because claims adjusting jobs seem to be recession proof. People who are claims adjusters can always find a job easily."

Where There's a Loss . . .

Public claims adjusters deal with residential and business losses arising from all kinds of calamities: floods, fires, explosions, hurricanes and high winds, riots and civil commotions, vandalism and theft.

According to Harper, anything or anyone can be insured. One of the more famous examples is the policy on actress Marlene Dietrich's legs in the 1940s.

"There are many different areas," he continues. "Insurance adjusters stepped in with property and business interruption and catastrophic loss claims when the World Trade Centers were struck. Those teams of adjusters made all the difference."

Harper notes that he has investigated five murders in his 27-year career, while there are others who handle everything from aviation claims and art theft to white-collar crime losses.

"During the recent rain, I had to determine how much money it would take to pay a farmer for the loss of several flooded acres of cotton," he recalls. "Chicken farmers in Turkey had to recover the loss of birds that were destroyed because of the avian flu."

For jobseekers looking to adjust their career path, Harper says most large insurance companies want applicants to have a college degree. However, it is not uncommon for someone who starts on the clerical side and shows initiative and "something on the ball" to become a successful adjuster. Most new hires start at an annual salary of $24,000 to $45,000. Trainees are then sent to adjusters school in various locations.

"Insurance adjusters help people immensely at a time of high stress," notes Harper. "If a house is destroyed, they help to get the person's life back in order, and that is satisfying."

More good news for those willing to take on a pressure-cooker career: Specialists such as those who handle natural disasters can earn $80 to $300 an hour, boosting annual pay to over $100,000.

Harper says the most enjoyable part of his job is meeting new people. "The most satisfying part is handing out checks to policy holders after an unforeseen event. Wading through water or climbing over broken walls to get to them is a great feeling."

Diverse Backgrounds

Janie Carduff, human resources manager with State Farm Insurance in Rohnert Park, says she looks for applicants that have a certain spark.

"Out of a vast field of applicants, someone with strong communication, team work and analytical skills will get my attention," she says. "In California, bilingual skills are a plus. The experience does not have to be in the insurance field because we have an intensive training program." State Farm hires recent college graduates as well as others from diverse career backgrounds.

Annual starting salaries can range from $34,000 in California's inland areas to $37,500 in the Bay Area.

Kate Diehl, with the Association of California Insurance Companies, comments that claims adjusters can only deliver on whatever coverage was purchased by the customer, and often that is disappointing news.

"Their job is difficult because they are interpreting a policy to someone who has had a loss," she attests. "After the hurricanes in Louisiana and other Gulf Coast areas, claims adjusters had to deliver a lot of bad news to policyholders whose losses were not covered because they didn't buy flood insurance policies."

Tough Negotiators Needed

Diehl thinks most people don't want to talk about insurance until it's too late and many don't know what their policy covers.

That's the reason she thinks a good claims adjuster is someone who has good negotiating skills, is good with people, is able to listen and communicate well, and has the ability to take technical information and translate it into language people can understand.

"You also have to be thick-skinned enough to not take things personally," she advises. "After all they are just the messengers."

Diehl notes the psychic rewards of meeting tough challenges like trying to find coverage for someone and thinking creatively about ways to help people work through a situation of economic loss. She points out that many policyholders have expectations that the insurance company will take care of everything when disaster strikes. So, knowing the nuances of the business is key to getting the job done. That might include telling a homeowner that her policy covers water damage but not the replacement of a broken water pipe that caused the damage.

Still, for the most part, "insurance adjusters can help people recover," Diehl concludes. "People are so grateful to know they will be taken care of. It's a warm feeling to be able to hand someone a check that allows them to buy whatever they need for themselves and their family."

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Duty of Care - Release of Liability

Reoven Capri v. L.A. Fitness International, LLC

Court of Appeal, Second District - February 15, 2006

It is common for health clubs to have a release and waiver of liability for injuries that occur during activities at the facility. This case opens a new avenue for members to avoid the application of such release.

Reoven Capri joined the L.A. Fitness Health Club and signed a membership agreement, which contained a release and waiver of liability. After joining the club, Mr. Capri used the treadmill and outdoor swimming pool 2-3 times a week. On November l7, 2002, while walking to the pool, Mr. Capri slipped and fell on the pool deck. An accumulation of algae was found later around the drain of the pool in the area where Mr. Capri fell.

Mr. Capri brought a personal injury action against L.A. Fitness International, alleging negligence and negligence per se. L.A. Fitness moved for summary judgment. The trial court granted the motion based on the waiver and release. Judgment was entered in favor of L.A. Fitness, and Mr. Capri appealed.

The Court of Appeal reversed. While the Court held the waiver and release barred the action for negligence, the Court also held it did not bar the action for negligence per se. The negligence per se cause of action was based upon a claim that mildew and other algae accumulated around the swimming pool. Mr. Capri alleged this violated State and County Health and Safety Codes, and constituted negligence per se. Mr. Capri then argued that the waiver and release was invalid under Section 1668 of the Civil Code, because it sought to relieve the health club of its responsibility for a violation of statutory law. Section 1668 provides that any contract which exempts anyone from responsibility for a violation of statutory law is against public policy.

Relying on Tunkl v. Regents of University of California (1963) 60 Cal.2d 92, the Court invalidated the contract as to the negligence per se cause of action. In Tunkl, the California Supreme Court held a release of liability will be invalidated if it violates the public interest. The Court stated that it was not necessary that there be a public interest to be involved where a violation of statutory law is alleged. A public interest is required to invalidate a release of general negligence, not negligence per se. The Court stated that the plain language of Civil Code Section 1668 rendered exculpatory provisions invalid as against public policy where they seek to avoid liability for a violation of statutory law. Thus, while there was no reason to bar enforcement of the release to the negligence cause of action, there was as to the negligence per se cause of action. This was because it alleged violations of the Health and Safety Code. Because the release fell within the exclusive prohibition of Section 1668 against contractual exculpation for violation of statutory law, it was invalid. The trial court therefore erred in finding the negligence per se cause of action barred by the release and waiver.

L.A. Fitness also argued the plaintiff assumed the risk of injury. The Court, however, felt that the risk of algae growing on a pool deck, causing it to become dangerously slippery, was not an inherent risk in the sport of swimming, and thus was not a risk assumed by those utilizing a swimming pool so as to relieve the pool owner of the duty to keep it clean. The Court therefore held that L.A. Fitness was not entitled to summary judgment based on the primary assumption of the risk doctrine. The Court reversed the judgment on the cause of action for negligence per se, and remanded the case to the trial court for further proceedings.

COMMENT

This case opens the door in every release and waiver case to an allegation that the injury was caused by a violation of statutory law, and thus the release and waiver may not be enforced. This decision will likely result in further appellate or legislative activity.

Duty To Defend - Contractual Indemnity

Kirk Crawford, et al. v. Weather Shield Mfg., Inc.

Court of Appeal, Fourth District - January 31, 2006

A contractual duty to defend another contained in an indemnity agreement has always been treated differently from an insurer's duty to defend. This case discusses the issue of whether that duty to defend arises immediately upon tender and exists independent of a duty to indemnify.

Two hundred homeowners in Huntington Beach, California brought a construction defect action against the developer, the project's window manufacturer, and the window framer. The window manufacturer's windows were claimed to leak and to fog. The developer cross-complained against the window manufacturer and window framer, seeking attorneys' fees in defending the suit, as well as indemnification. The homeowners settled with the developer, and the cross-complaints were tried. A jury

Continued on page 5

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Continued from page 4

found for the window manufacturer on claims of negligence and breach of warranty, and on the claim for contractual indemnity. The jury found against the window framer.

The window manufacturer's contract with the developer provided that it would defend and indemnify the developer in actions brought against the developer founded on claims growing out of the execution of the window manufacturer's work. The trial court found the window manufacturer responsible for the developer's attorneys' fees attributable to window problems, even though it had no duty to indemnify. The Court allocated 70% of the developer's defense costs to window problems based on the developer's risk manager's testimony. The Court then split the amount equally between the window manufacturer and the window framer, and ordered the window manufacturer to pay the developer $131,274. The trial court also awarded the developer fees and costs in prosecuting the cross-complaint. The trial court later granted a new trial on liability, based upon erroneous jury instructions and the failure to instruct on strict liability. Appeals were filed on the trial court's determination of damages, as well as new trial order.

The Court of Appeal, in a 2-1 decision, affirmed the granting of the new trial order, and affirmed the order granting the developer reimbursement of its defense costs and fees. The Court quickly disposed of the new trial order, and held that the trial court properly granted that motion. The bulk of the opinion, consisting of 71 pages, is devoted to a discussion of whether the window manufacturer was excused from any duty to provide a defense to the developer where it had not been found negligent. In an opinion that discusses all of the major contractual indemnity cases decided in California, and quotes from such sources as law review articles, and Monty Python, the Court held that the absence of negligence did not excuse a defense obligation undertaken by the subcontractor in the indemnity agreement.

The Court stated it was not adopting a rule requiring a defense in all cases potentially covered by an agreement, such as in insurance law. Rather, the Court stated it must be shown that the claim grows out of the subcontractor's particular work. The Court felt this result was warranted by reason of the language of the particular agreement, as well as Civil Code Section 2778, which governs indemnity agreements.

The Court held that attorneys' fees for prosecuting an indemnity cross-complaint where there is no indemnity, but there is a right to obtain reimbursement for fees paid, are left to the discretion of the court. In this case, the trial court granted the developer recovery of those fees.

The Court held that the duty to defend was triggered upon tender. This duty arose independent of whether the window manufacturer was ever held negligent. The duty was not to provide a complete defense, but only a defense to claims arising out the subcontractor's work. This duty was triggered even though the claim was ultimately proven to be unfounded. The Court stated trial courts handling multiple claims by developers against subcontractors could sort through the problems that might arise in allocating the defense.

The Court affirmed the new trial order and the trial court's order awarding the developer attorneys' fees for defending the action and prosecuting their cross-complaint.

The dissent asserted the majority opinion adopted a new rule for interpreting duty to defend contract provisions. The dissent felt that the language of the contract was tied to indemnity. The dissent stated there is no duty to pay for the defense where there is no duty to indemnify. Further, the dissent would not have awarded fees and costs to the developer as a prevailing party in the prosecution of the cross-complaint. Finally, the dissent stated this case would require trial courts to sort out the portion each subcontractor must pay toward the defense of the developer before these fees are incurred, and would require subcontractors to provide a current defense to claims that are only potentially covered.

COMMENT

This controversial decision will undoubtably be requested to be reviewed in the California Supreme Court. In the meantime, the decision is likely to shake up the handling of construction defect lawsuits.

CAIIA *Calendar*

CAIIA Annual Convention

October 11-13,
Contact Sharon Glenn at 925-277-9320

Claims Conference of Northern California

September 2006

Insurance Law Flash

Submitted by Sedgwick, Detert, Moran & Arnold LLP

Court of Appeal Limits Insurer Tort Liability

Absent a Covered Claim, California Does Not Recognize a Cause of Action for Negligence in Claim Handling

While it has long been the law that something more than mere negligence is required to recover in tort against an insurer, some trial courts have allowed juries to consider awarding damages for the independent tort of negligence in claim handling. Putting the issue to rest once and for all, the Second Appellate District of the California Court of Appeal held on Thursday that "absent coverage, there is no tort liability for improperly investigating a first-party insurance claim." Benavides v. State Farm General Insurance Co. (C.A. 2d filed February 23, 2006)

Benavides owned a condominium in Santa Monica, California. In 2001, during an earthquake re-inspection, mold was found in the exterior walls of the Condominium complex. Subsequent testing revealed mold inside plaintiff's condominium. Plaintiff moved out of her home and submitted an additional living expense claim to State Farm. State Farm investigated the loss, determined that the mold was caused by faulty construction, and denied the claim. Benavides sued State Farm, alleging that State Farm performed an inadequate investigation and reached an erroneous coverage decision. After a trial, the jury returned a verdict in State Farm's favor on coverage and bad faith but found State Farm liable on a separate cause of action for "negligent claim handling", awarding the plaintiff $260,000 on that cause of action.

The appellate court determined that, absent coverage, State Farm cannot be held liable in tort for negligent claim investigation. Recognizing the contractual nature of the relationship between insurer and insured, the appellate court concluded: "Absent coverage, there is no tort liability for improperly investigating a first party insurance claim whether the insurer's conduct is characterized as an implied covenant breach or negligence." The court left open one door however, when it stated that even in the absence of coverage, "potential liability could still exist because of the unreasonable delay in performing an investigation." Since that issue was not before the court, however, it was not addressed.

News of Members & Friends

Dick Brown Dies

Sadly the executive office of the CAIIA received word that Dick Brown of R.A. Brown Adjusting Company passed away at age 66 years on March 3, 2006. Dick was a long time member of CAIIA. He was always ready to contribute. He spent time at the booth in Sacramento a couple of years ago. When he retired in 2003 he taught AARP safe driving classes. He was dedicated to his Church as a deacon and adult teacher.
He closed R.A. Brown Adjusting Co., Blythe, CA in 2003 but if you needed anything down that direction you could still call and get guidance.
The CAIIA sends its condolences to Dick's family.

John Sargent

The executive office of the CAIIA received news that long time supporter of the CAIIA John Sargent passed away on March 10, 2006. John was the agent through whom many members of the CAIIA had their E&O insurance. He help support many of the conventions and other activities of the CAIIA for years.
The CAIIA sends it condolences to his wife Joann.

CAIIA SEED Program
(Seminar for the Evaluation of Earthquake Damage)

As an authorized California DOI education provider (CDI# 20638), the California Association of Independent Insurance Adjusters (CAIIA) will be presenting its annual Fair Claims Settlement Practices Regulations (FCSPR) seminars and, at two of the locations, we will also be offering SEED (Seminar for the Evaluation of Earthquake Damage) program seminars. The SEED program addresses the training and certification required by CCR, Title 10, Chapter 5, Subchapter 7.5.1, Article 1, Section 2695.40 through Section 2695.45. Those regulations set forth the requirements of Insurance Adjuster Training for Evaluating Earthquake Damage which are now required for any insurer who may have earthquake claims in the state of California. It is extremely important that insurance adjusters be trained and certified before the next earthquake. Failure to do so will require insurers to report to the Department of Insurance on each and every claim file the identification of any non-certified adjuster that was involved in handling or supervision of the file. It will be no surprise if this information is used against carriers if consumers complain about claims handling by non-certified adjusters.

At locations in Fresno (5/12/06), Glendale (5/9/06), San Diego (5/11/06) & San Ramon (5/12/06), we will be offering only the FCSPR seminars.

In Sacramento (5/18/06) and Buena Park (5/25/06) we will be offering both the FCSPR seminars and the SEED program seminar. You can attend either or both programs at those locations. There is no discount for not attending the FCSPR seminar at a SEED location.

Register now for the seminar you wish to attend. Be sure and mark the appropriate location in the box to the right.

Complete a form for each person.
There is limited seating.

Name_____
Co._____
Address_____
City_____ Zip_____
Phone_____
E-mail Address: _____

Fees (circle one):	Reg's Only	Reg's & SEED
CAIIA Member fee	$40.00	$ 90.00
Ins. Co. Employee fee.	$50.00	$100.00
Non-Member I/A fee	$60.00	$160.00*

Amount Enclosed - $_____

Payment must accompany registration.

Credit Card Pymt: Am Ex_____ Visa _____ M/C _____
Ex. Date:_____ Cardholder:_____
Card No:_____
Signature:_____

Make checks payable to CAIIA, mail registration and payment to:

CAIIA c/o Peter Schifrin
Schifrin, Gagnon & Dickey, Inc.
14530 Delano Street, Suite 200
Van Nuys, CA 91411

Questions? Call Peter Schifrin @ (818) 909-9090

FCSPR and SEED Seminars Schedule
for all locations:

Registration 8:00 a.m. to 9:00 a.m.
FCSPR Seminar 9:00 a.m. to 10:00 a.m.
SEED Seminar 10:10 a.m. to 5:00 p.m.

FCSPR & SEED SEMINAR LOCATIONS/DATES:

_____May 18, 2006
Sacramento: Doubletree
2001 Point West Way
(916) 929-8855

_____May 25, 2006
Buena Park: Embassy Suites
7762 Beach Blvd.
(714) 739-5600

FCSPR SEMINARS ONLY DATES"

_____ May 12, 2006
Fresno: Ramada Inn
324 E. Shaw Ave.

_____May 9, 2006
Glendale: Carl Warren
500 N. Central, 4th Floor

_____May 10, 2006
Redding: Swanson & Assoc.
375 Smile Place

_____May 11, 2006
San Diego: American Technologies
1830 Gillespie Way
El Cajon

_____May 12, 2006
San Ramon: Bishop Ranch
2440 Camino Ramon, Suite 295

Deli Lunch/refreshments served at SEED Program locations only. Please visit www.caiia.org for more information. Special room rates available by mentioning CAIIA Seminar.

**CAIIA will agree to offset any membership dues for Non-CAIIA Independent Adjusting Firms joining the CAIIA within 30 days, up to $80.00 total for each adjuster, from non-member firm with a cap of $160.00.*

Tomb of the Unknown Soldier

1. How many steps does the guard take during his walk across the tomb of the Unknowns and why?

Answer: 21 steps. It alludes to the twenty-one gun salute, which is the highest honor given any military or foreign dignitary.

2. How long does he hesitate after his about face to begin his return walk and why?

Answer: 21 seconds, for the same reason as answer to number 1.

3. Why are his gloves wet?

Answer: His gloves are moistened to prevent his losing his grip on the rifle.

4. Does he carry his rifle on the same shoulder all the time, and if not, why not?

Answer: He carries his rifle on the shoulder away from the tomb. After his march across the path, he executes an about face and moves the rifle to the outside shoulder.

5. How often are the guards changed?

Answer: Guards are changed every thirty minutes, twenty-four hours a day, 365 days a year.

6. What are the physical traits of the guard limited to?

Answer: For a person to apply for guard duty the tomb, he must be between 5'10'' and 6'2" tall and his waist size cannot exceed 30". Other requirements of the Guard: They must commit 2 years of life to guard the tomb, live in a barracks under the tomb, and cannot drink any alcohol on or off duty for the rest of their lives. They cannot swear in public for the rest of their lives and cannot disgrace the uniform {fighting} or the tomb in any way. After two years, the guard is given a wreath pin that is worm on their lapel signifying they served as guard of the tomb. There are only 400 presently worn. The guard must obey these rules for the rest of their lives or give up the wreath pin.

The shoes are specially made with very thick soles to keep the heat and cold from their feet. There are metal heel plates that extend to the top of the shoe in order to make the loud click as they come to a halt. There are no wrinkles, folds or lint on the uniform. Guards dress for duty in from of a full-length mirror.

The first six months of duty a guard cannot talk to anyone, nor watch TV. All off duty time is spent studying the 175 notable people laid to rest in Arlington National Cemetery. A guard must memorize who they are and where they are interred. Among the notables are: President Taft, Joe E. Lewis {the boxer} and Medal of Honor winner Audie Murphy, {the most decorated soldier of WWII} of Hollywood fame.

Every guard spends five hours a day getting his uniforms ready for guard duty.

Eternal Rest Grant Them O Lord, and Let Perpetual Light Shine Upon Them.

In 2003 as Hurricane Isabelle was approaching Washington, DC, our US Senate/House took 2 days off with anticipation of the storm. On the ABC evening news, it was reported that because of the dangers from the hurricane, the military members assigned the duty of guarding the Tomb of the Unknown Soldier were given permission to suspend the assignment. They respectfully declined the offer, "No way, Sir!" Soaked to the skin, marching in the pelting rain of a tropical storm, they said that guarding the Tomb was not just an assignment, it was the highest honor that can be afforded to a serviceperson. The tomb has been patrolled continuously, 24/7, since 1930.