CAIIA Status Report

APRIL 2007

Superior Court Upholds California Department of Insurance Protections for Homeowners

SACRAMENTO - California Department of Insurance (CDI) protections for homeowners filing claims has been upheld by the California Superior Court. The Court ruled that insurers may not depreciate the cost of labor when paying on homeowners' insurance claims. That practice by insurers forced homeowners to make up the difference and increased their out-of-pocket expenses to repair damage to their homes.

The ruling comes in response to a 2003 lawsuit filed by insurance trade organizations which challenged almost every section of CDI's amendments to the Fair Claims Settlement Practice Regulations. The Department of Insurance's sweeping amendments increased protection to consumers and set more stringent standards for insurers. All but the "depreciating labor" issue were settled through negotiations.

This is good news for California homeowners," said Insurance Commissioner Steve Poizner. "When you pay for homeowners' policy and file a claim, you should get the coverage you pay for. We were confident the court would agree."

At issue was whether labor costs could be depreciated. The Court ruling upheld CDI's view that unlike physical property, the labor does not lose value through the passage of time, and therefore can not be depreciated. Whether you are installing new replacement carpet or old replacement carpet, the cost of installing it would be the same.

CAIIA SEED and Fair Claims Settlement Practices Regulations Seminars to be held in June

We now are offering Special Investigations Unit (SIU) training at the SEED locations. This is training required by the Department of Insurance for all adjusters.

SEED Seminars will be held in Sacramento on June 6th and Orange County on June 27th.

FCSPR Seminars will be held in selected California cities during the month of June. We have one of the recertification seminars scheduled for 9:00 AM, June 12, 2007, at Carl Warren and Company, 500 N Central Ave, 4th Floor, Glendale, CA.

More information to come soon!

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An Employer Organization of Independent Insurance Adjusters

Inside This Issue

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■ PRESIDENT'S MESSAGE

Hopefully everyone who attended our midterm conference in Healdsburg made it home safely. The rooms at the Hotel Healdsburg were some of the nicest that I have stayed, with hardwood floors, the calming scent of lavender throughout, not to mention the pillow top beds that swallowed you up like a giant marshmallow. The hotel staff was extremely accommodating. Thursday night before dinner Asepsis Technology graciously hosted our cocktail hour at the Manzanita Restaurant. We enjoyed the personal service of the owner and the appetizers were delicious. Thank you again John Birrer for your generosity. Following that we had a fantastic dinner back at the hotel and then some of us sat in the lobby in overstuffed sofas and chairs in front of a glowing fire. At some point I almost forgot what I was there for. On Friday morning after a filling breakfast and freshly brewed coffee that was, in this diehard Starbucks addict's opinion, a very close contender, we held our annual business meeting. Yes, everyone who joined us the night before was there for the meeting. A lot was accomplished and we have now tentatively set the dates for the next SEED seminars for June 6, 2007 in Sacramento and June 27, 2007 in Irvine. Keep your eyes glued for further details in upcoming Status Reports. We are also planning the Re-certification seminars with dates and locations to be determined. Other exciting news is that the Annual Convention is still in the planning stages, but looks like we will be back at Disneyland's Grand California, October 17 – 19 and we have decided to change it up a little this year and have some new and exciting things in the planning stages. We hope to see a lot more of our insurance industry folks as well as our own members. I will sign off for now by saying the CAIIA continues to grow and is looking stronger than ever.

SHARON GLENN
President - CAIIA 2006-2007

When You Need to Know What Really Happened

Submitted by Garrett Engineers, Inc. - Forensic Division

The insured took his late model sports car to the local branch of a nationally recognized company for an engine oil and filter change. Three months later he brought it in again for another engine oil and filter change. They used a premium synthetic oil both times. Two weeks later, the engine failed. GEI was called in to investigate the cause of the engine failure.

The vehicle was examined at a high performance auto repair shop. The engine had been removed prior to the expert's arrival, and was disassembled.

The camshaft bearing surfaces in both cylinder heads exhibited severe wear damage. Severe wear damage was also observed on the mating camshaft bearing caps. A section at the rear of one of the bearing caps broke off.

The journals on the left and right camshafts exhibited transferred aluminum from the cylinder head bearing surfaces. Evidence of overheating was also observed at these locations.

The front end of the right camshaft exhibited circumferential scratches, which indicated that the camshaft sprocket had rotated on the camshaft. Damage was also observed in the slot for the camshaft sprocket alignment key. The corresponding slot in the right camshaft sprocket had been sheared away.

No significant damage was observed on the engine block. The crankshaft exhibited wear damage on the journal for the number six connecting rod. The number six connecting rod and its bearing inserts also exhibited excessive wear and heat damage. A significant amount of aluminum debris was found in the crankshaft oil passages when the engine was disassembled.

The oil pump was partially disassembled for the inspection. Removal of the oil pump cover revealed that the inner rotor of the gerotor pump was broken. (Call us if you need the definition of a gerotor pump!)

The damage to the camshafts and camshaft bearing surfaces was caused by insufficient lubrication. The engine oil level was at its proper level prior to the engine failure, and it was not contaminated. The owner had specified a premium synthetic oil, which he had received. So why the lubrication failure?

The answer was found in the viscosity of the oil that was used. The higher the viscosity number, the thicker the fluid is. A low number of 5 to 20 indicates a fluid that flows easily at low temperatures-much like water. A high number like 50 indicates a thicker fluid that flows slowly at low temperatures-much like honey or molasses. The engine was an overhead cam design, which positions the camshafts on top of the cylinder heads relatively far from the oil pump. The manufacturer specified a low viscosity 5W-20 motor oil for this engine, in part to ensure that the camshafts received oil from the oil pump shortly after startup.

On both oil changes, the oil change technicians used much higher viscosity motor oil. The higher viscosity motor oil in the insured's engine took a longer time to reach the camshaft bearing surfaces. As a result, the camshafts did not receive adequate lubrication during the first few moments after the engine was started. Over multiple engine start cycles, this condition caused excessive wear of the camshaft bearing surfaces.

As these surfaces deteriorated, friction between the camshafts and the bearing surfaces increased. Eventually, the heat created by this friction caused the right camshaft to seize. As the camshaft suddenly stopped rotating, the timing chain continued to turn the camshaft sprocket. As a result, the camshaft alignment key slot was sheared out of the sprocket.

The deteriorating camshaft bearing surfaces also caused small pieces of aluminum wear debris to enter the lubrication system. Some of this debris clogged the oil passages in the crankshaft, which restricted oil flow to the connecting rod bearings and caused the number six connecting rod bearing to fail. Debris contamination caused the oil pump to fail as well.

Whether through ignorance or carelessness, by refilling the engine with an incorrect, heavier viscosity motor oil, on two separate occasions, the technicians directly contributed to the engine failure

CAIIA Annual Convention to be Preceded by Golf Tournament

THE **CAIIA Annual Convention** will be held at **Disney's Grand Californian Resort** in Anaheim on **Thursday October 18th**.

The **First Annual CAIIA Golf Tournament** will be held on **October 17th** at the **Anaheim Hills Golf Course**.

More information to come soon!

Insurance Law Update

Submitted by Sedgwick, Detert, Moran & Arnold, LLP

No Coverage for Junk Faxes

Submitted by Bruce D. Celebrezze

California is the latest state to weigh In on whether claims for sending unsolicited advertisements to fax machines in violation of the Federal Telephone Consumer Protection Act of 1991 (TCPA) (47 U.S.C. § 227 (b) (1)(C), are covered under general liability insurance policies. In *ACS Systems, Inc. v. St. Paul Fire & Marine Ins. Co.*, 2007 WL 214258 (2nd Dist. Jan. 29, 2007), the Court of Appeal found that the type of invasion of privacy covered under the policy was not implicated in the "junk fax" scenario. In addition, there was no claim under the property damage coverage because the alleged damage was not caused by accidental conduct. The fax transmissions were not an accident, as an accident requires unintentional acts or conduct. The insured intended to send the faxes.

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Evidence - California Standard For Admission of Expert Testimony

O'Neill v. Novartis Consumer Health, Inc., Court of Appeal, Second District - February 27, 2007

Products liability actions often turn on the admissibility of expert testimony and evidence concerning the safety of a product. In this case, Defendant Novartis Consumer Health, Inc. (Novartis) was sued in multiple states over the safety of cough and cold products containing phenylpropanolamine (PPA). Plaintiffs Pearl O'Neill and Linda Lutz were two Plaintiffs that sued Novartis in California, alleging serious personal injuries from using Novartis products. Out of a large number of suits, Ms. O'Neill and Ms. Lutz' cases were selected for a consolidated trial. After a lengthy trial, the jury returned defense verdicts on all causes of action.

Plaintiffs appealed, contending that the trial court committed prejudicial error for a number of reasons. Most significantly, Plaintiffs asserted that the trial judge erred by allowing Novartis to introduce evidence of Novartis' compliance with Food and Drug Administration (FDA) standards, and by permitting Novartis to introduce expert testimony challenging the validity of PPA studies. The Second District Court of Appeal affirmed the judgment.

At trial, Novartis introduced evidence that the FDA did not form an opinion as to the safety of products containing PPA until 2000. It was not until 2001 that the FDA withdrew approval of all products containing PPA. Prior to 2000, the FDA did not state a position on the safety of such products. Plaintiffs claimed to have suffered their injuries in 1995 and 1996 -- prior to the date the FDA withdrew approval. At the close of trial, the trial court refused Plaintiffs' request to instruct the jury that governmental standards (such as those established by the FDA), should not be considered as a basis for assessing the safety of a product in a design defect claim. Instead, the trial judge instructed the jury that FDA action or inaction, though not dispositive, may be considered to show whether a product is safe or not safe. The Court of Appeal, reviewing the jury instructions, found the trial judge's instruction to the jury to be proper. The Second District held that the instruction in question did no harm to Plaintiffs' design defect claim and that FDA regulations could be considered.

During trial, Plaintiffs introduced results of the Yale Study, which concluded in 2000 that products containing PPA were unsafe. The Yale Study, in part, led the FDA to withdraw approval for products containing PPA. As part of its' case during trial, Novartis introduced expert testimony criticizing the methodology used for Yale's case controlled study. On appeal, Plaintiffs claimed that the trial judge erred by permitting this expert testimony, because the testimony was inconsistent with People v. Kelly (1976) 17 Cal. 3d 24. The Kelly case set the standard in California for admission of expert testimony based upon the application of a new scientific technique. Under Kelly, expert testimony may be barred if the proposed scientific techniques is unreliable, or the expert seeking to testify as to the scientific technique in question, is not properly qualified. In this case, the Court of Appeal ruled that the Kelly rule did not apply. Novartis' evidence attacking the Yale Study was not based on new scientific methodology; rather, it was a challenge to the professionalism with which the methodology was applied. Novartis contended there was careless testing conducted in the Yale Study. The Court of Appeal held that such testimony affected the weight of the evidence, not admissibility. Finding the trial judge's rulings to be proper, the Second District affirmed the jury's judgment for Novartis.

Continued on page 5

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Continued from page 4

COMMENT

This case is helpful for defendants in products liability actions. The case restates that compliance with governmental standards, while not dispositive, may be relevant in determining whether a product is safe. Further, expert testimony can be introduced at trial to attack the professionalism of experts who critique the safety of a given product.

Civil Procedure - Relation Back Doctrine Held Not To Apply To Wrongful Death Action

San Diego Gas & Electric Company v. Superior Court, Court of Appeal, Fourth District - January 25, 2007

The "relation-back" doctrine provides an exception to a statute of limitations. Typically, the issue arises when a plaintiff seeks to add a defendant or a new cause of action, and the statute of limitations has run between the date the action was originally filed and the time the amendment to the complaint is sought. If the amended complaint "relates back" to a timely-filed original complaint, it escapes the bar of the statute of limitations. In this case, the issue was whether the relation-back doctrine applied to save the claims of an omitted heir whose wrongful death cause of action would otherwise have been barred by the statute of limitations.

In January 2004, Captain Adam Miller and three other Marines were killed while participating in a helicopter training exercise over Camp Pendleton, CA. The Marine helicopter struck Defendant San Diego Gas & Electric Company (SDG&E) utility lines. Certain heirs of the decedents, including Captain Miller's parents timely filed suit against SDG&E alleging wrongful death and survivor causes of action. In July 2006, on the eve of trial, Plaintiffs sought leave to file an amended complaint adding Nicole Miller, Captain Miller's widow, to the action. The trial court granted the motion to amend. SDG&E filed a petition for writ of mandamus, requesting that the trial court's order be vacated and that the motion be denied. The Fourth District Court of Appeal issued a writ of mandate, vacating part of the trial court order.

It was undisputed in this case that a two-year statute of limitations applied to Mrs. Miller's wrongful death and survivor causes of action. The parties also agreed that Mrs. Miller's claims were untimely and barred by the statute of limitations unless the relation back doctrine applied. The Court of Appeal clarified that an amended complaint relates back to the original complaint, and avoids the statute of limitations, if it: a) rests on the same general set of facts as the original complaint; and b) refers to the same accident and injuries as the original complaint. The Fourth District determined that an amended pleading that adds a new plaintiff does not relate back if the new party seeks to enforce an independent right or to impose greater liability against the defendants.

In a wrongful death action, each heir is required to prove his or her own individual loss in order to share in a verdict. Therefore, each heir has a personal and separate cause of action. The Court of Appeal reasoned that if Mrs. Miller's claim were allowed, SDG&E's potential exposure could be greatly increased. The complaint, as amended, potentially changed the injuries being claimed. As such, the Court held that the relation back doctrine did not apply to the wrongful death claim of Mrs. Miller.

On the other hand, the Court of Appeal held that the survivor action did not constitute a new, independent cause of action. Rather, a survival claim merely prevents abatement of the decedent's cause of action and provides for enforcement by the decedent's personal representative or successor in interest. The Court ruled that adding Mrs. Miller as a plaintiff to the survivor cause of action, did not change the nature of the claim. The real question was whether Mrs. Miller was a proper plaintiff, because Captain Miller's mother had already been designated as the personal representative of the estate. The Court of Appeal held this question could not be resolved at the pleading stage. The Court therefore, held that the trial court did not err in adding Mrs. Miller to the survivor claim. A writ of mandate was issued directing the trial court to vacate its order adding Mrs. Miller as a plaintiff to the wrongful death cause of action, but denied the petition as to the survival cause of action.

COMMENT

This case provides a good summary of when the relation back doctrine allows a party to avoid the bar of a statute of limitations. If the amended complaint adds an independent claim for damages that increases potential exposure to a defendant, the amendment will not be permitted.

Correction to CAIIA Directory

The CAIIA regrets that the listing in our most recently published directory has an error for Sequoia Professional, Inc. Please change your copies to show the below corrected information for them.

JENEE' CHILD, CLAIMS ADMINISTRATOR
SEQUOIA INSURANCE PROFESSIONALS, INC.
3233 GRAND AVENUE, SUITE N-402
CHINO HILLS, CA 91709
OFFICE - 909-393-8806 • FAX - 951-346-3708
WEBSITE - www.SequoiaPros.com

RWB Legal Reflections

Prepared by Rudloff, Wood & Barrows, LLP

RAPPAPORT-SCOTT V. INTERINSURANCE EXCHANGE

By Kevin A. Norris, Esq.

Insurers are well familiar with the obligation to accept reasonable offers to settle a lawsuit by a third party against an insured when the offer is within the policy limits. The penalty for failing to do so in California exposes the insurer to tort liability for the entire judgement even if the amount exceeds policy limits.

However, failure to accept a settlement offer does not necessarily expose the insurer to tort liability in the context of a bad faith suit.

In the recent case of Rappaport-Scott v. Interinsurance Exchange of the Auto Club (2007) 146 Cal.App.4th 831, the Second District Court of Appeal affirmed the trial court's decision to sustain with prejudice the demurrer to an insured's cause of action for breach of the implied covenant of good faith and fair dealing. The insured had been injured in an auto accident with an underinsured motorist. The insured sued the underinsured motorist and settled that action for $25,000, the applicable policy limit. The insured then turned to her insurer, Interinsurance Exchange, for benefits under her underinsured motorist coverage.

The insured demanded arbitration of her claim, the value of which she indicated was $346,732.34 and requested an arbitration award of $75,000, which represented her policy limit of $100,000 for underinsured motorists, less the $25,000 paid by the underinsured motorist. The insured also made a "settlement demand" of $75,000 in contrast to the $7,000 offered by Interinsurance Exchange.

The arbitration hearing resulted in a finding that the insured was entitled to an award of $33,000, based upon $63,000 in total damages, less the $25,000 payment by the underinsured motorist and the $5,000 in previous payments by Interinsurance Exchange.

The suit for breach of the implied covenant of good faith and fair dealing followed, alleging that Interinsurance Exchange had refused to settle the claim for a reasonable amount within the policy limit and that such refusal amounted to an unreasonable delay in the payment of benefits. After the third demurrer by Interinsurance Exchange (to the second amended complaint) was sustained with prejudice, appeal was taken.

On appeal, the Court held that an insurer's liability in tort for failure to accept a reasonable settlement offer can only arise in at third party context. The duty of an insurer in the first party context is not too unreasonable withhold benefits due under the policy. There is no corresponding duty to accept "reasonable" settlement offers.

The court further held that although there was a significant difference between the $7,000 offer by Interinsurance Exchange and the final award of $33,000, the difference between the $33,000 award and the $346,732.64 claimed by the insured demonstrated, as a matter of law, a genuine dispute as the amount payable on the claim, and that there was therefore no unreasonable withholding of policy benefits by Interinsurance Exchange. The insured had failed to allege facts sufficient tostate a cause of action for each of the implied covenant of good faith and fair dealing and demurrer was proper.

Should children witness childbirth?

Due to a power outage, only one paramedic responded to the call. The house was very dark so the paramedic asked Kathleen, a 3-year-old girl to hold a flashlight high over her mommy so he could see while he helped deliver the baby. Very diligently, Kathleen did as she was asked. Heidi pushed and pushed and after a little while, Connor was born. The paramedic lifted him by his little feet and spanked him on his bottom. Connor began to cry. The paramedic than thanked Kathleen for her help and asked the wide-eyed 3-year-old what she thought about what she had just witnessed. Kathleen quickly responded, "He shouldn't have crawled in there in the first place . . . . . smack his butt again!"

If you don't laugh at this one there is no hope for you.

Insurance Commissioner Steve Poizner Announces Orange County Insurance Fraud Arrests

ORANGE COUNTY - Insurance Commissioner Steve Poizner announced today the arrests of five people in four separate cases of insurance fraud in Orange County.

"Today's announcement of multiple arrests illustrates that we will find fraud wherever it exists," said Insurance Commissioner Steve Poizner. "Our investigators are combing through the county, in search of those who seek to fleece the system. If you cheat the system, you could be next."

The arrests include:

• The arrest of an Irvine man for filing an insurance claim for rental car payments he allegedly made to himself. James Toufic Assali, 32, was arrested at his residence on January 23, 2007 by the Irvine Police Department on three felony counts of Insurance Fraud, and one felony count of Attempted Grand Theft. Assali was booked into the Orange County Jail, and his bail was set at $20,000.00.

According to the Orange Regional Office of the CDI Fraud Division Investigators, James Toufic Assali submitted a fraudulent rental car invoice to Infinity Insurance claiming $5,235.00 in rental charges. The invoice showed payment for the vehicle was to be made to "Fortis Rental Solutions." When Assali was questioned about the invoice, he said he never heard of the company Fortis Rental Solutions and that his wife had made all of the car rental arrangements.

During the CDI investigation, documentation discovered indicated that Fortis Solutions was a company that was registered and owned by James Toufic Assali since November 20, 2003. A pre-trial hearing is set for Assali in February 2007.

• The arrest of an Irvine couple, Cynthia Irvine, 43, and Barry Irvine, 45, on three felony counts of insurance fraud. According to CDI Investigators, on June 13, 2006, Cynthia Irvine backed out of a parking space and struck another vehicle, causing property damage and alleged injuries to both occupants. After the accident, she called the Automobile Club of Southern California and obtained insurance coverage for her vehicle, as she was uninsured at the time of the accident.

Later that same evening, Barry Irvine called the other party and informed them that he and his wife were uninsured and asked them to report a loss date of June 14, 2006, as that was the date their policy would take effect. However, the other party had already reported the loss on June 13, 2006 to their own carrier, Ameriprise Insurance. Cynthia then called Automobile Club and informed them that she had been in an accident. However, she reported the date of loss as June 14, 2006, the date her new automobile policy took effect.

Bail was set at $20,000 each. A pre-trial hearing is set for the Irvines in February 2007.

• Oscar Godinez, 23, arrested on January 25, 2007 in Anaheim and transported to the Orange County Jail in Santa Ana. He was charged with four felony counts of Insurance Fraud; two misdemeanor counts of Falsely Reporting a Crime; and one misdemeanor count of Hit and Run with Property Damage. Bail was set at $30,000.

According to Investigators, on July 11, 2006, Oscar Jimenez Godinez crashed his vehicle into a parked/unoccupied vehicle in the city of Santa Ana, fled the scene of the accident and returned to his home. Godinez then called the Santa Ana Police Department and reported that his vehicle had been stolen from his residence. On the same day, Godinez also called his insurance company, AIG Insurance, and reported that his vehicle had been stolen from his home. During the CDI investigation, Godinez admitted that he was involved in the hit- and- run accident. A pre-trial hearing is set for Godinez in February 2007.

• Julie Jo Lagos, 29, was arrested at her residence in Brea, CA on January 25, 2007, and charged with six counts of Insurance Fraud and one count of Hit- and- Run. Bail has been set at $25,000.00. If convicted, Lagos could be sentenced to up to five years in state prison.

According to investigators with the Orange Regional Office of the CDI Fraud Division, Julie Lagos was involved in an auto collision on April 13, 2006. At the time of the collision, Lagos was uninsured because her policy had been cancelled due to non-payment. Minutes after the collision, Lagos contacted Auto & Home Insurance Plus and purchased a new policy by telephone but failed to disclose to Auto & Home Insurance Plus that she had been involved in the collision. On April 20, 2006, Lagos contacted her insurance company to report that she had been in a traffic collision April 13, but misrepresented the time of the collision so she could claim it on her insurance. Lagos made numerous misleading statements in support of the claim, including that she was not in the area at the time of the hit-and-run. Witness statements and a check of Lagos' employment records indicated that she was, in fact, in the area of the collision when it occurred.

CAIIA *Calendar*

CAIIA Annual Convention

October 18, 2007
Disney Grand California Resort
Anaheim, California
Contact Peter Schifrin at 818-909-9090
pschifrin@sgdinc.com

To Add or To Combine? Rating Impairment of the Hand -Rating Tip of the Week

There is often confusion about whether specific impairments are added or combined when assessing hand injuries. Hopefully this week's tip will help clarify the proper procedures and serve as a quick reference in the future.

The Guides differentiate between the thumb and fingers with respect to this process.

Thumb

* Amputation at or proximal to the MP joint is expressed in terms of upper extremity impairment and is added directly to other upper extremity impairment, if applicable
* Amputation distal to the MP joint is expressed in terms of digit impairment
* All joint motion impairments are added
* Additional impairing factors (sensory, motor, vascular, etc.) are combined at the smallest common unit (i.e. digit < hand < upper extremity < whole person)

Digits

* Amputation is expressed in terms of digit impairment
* Joint motion impairments of a common joint are added
* Multiple joint impairments of the same digit are combined at the digit level
* Additional impairing factors (sensory, motor, vascular, etc.) are combined at the digit level
* The total digit impairment is converted to hand impairment

Hand

* Hand impairment values for multiple digits are added
* The final hand impairment is then converted to upper extremity