CAIIA Status Report

May 2014

Insurance Adjuster Can Be Independently Liable For Negligent Misrepresentation And Intentional Infliction Of Emotional Distress

Credit to Barstow McCormick, Fresno, CA

Bock et al. v. Hansen, (April 2, 2004) - Cal.Rptr.3d -, 2004 W.L. 1315314

UNDERLYING CLAIM

On September 9, 2010, a forty-one foot long, seventy-three hundred pound tree limb crashed into the home of Michael and Lorie Bock causing damage to their chimney, the front and interior of their house, their fence and Ms. Bock's car. The Bocks reported the incident to their homeowner's insurer, Travelers Property and Casualty Insurance Company ("Travelers"), whose adjuster inspected the loss. During the inspection, the adjuster allegedly moved limbs and branches prior to taking any photos of the damage. Further, the adjuster allegedly told Ms. Bock that the clean-up was not covered under the policy. Relying on the adjuster's statements, Ms. Bock cut her hand while attempting to clean up broken glass.

The Bocks subsequently discovered that the fallen limbs caused significant damage to the chimney. During a second inspection of the Bocks' home, the adjuster and a field manager were allegedly shown cracks in the chimney as well as gouges where the limbs made contact. The adjuster allegedly told the Bocks again that their policy did not cover the clean-up. Travelers then provided the Bocks a revised estimate which allegedly eliminated amounts previously included based on an alleged false statement that the Bocks confirmed during the re-inspection that there was no damage to certain items. Travelers also allegedly retained an unlicensed contractor to inspect the Bocks' home. The contractor prepared a report following his inspection which allegedly concluded that there was no scarring, gouging, or scuff marks on the siding or trim materials on the northeast corner of the residence, that the fireplace appeared to be in good and serviceable condition, and that cracks were due to the age of the chimney. Travelers allegedly denied coverage for the chimney damage based on the contractor's report.

The Bocks filed a complaint against Travelers, the adjuster and the contractor. Relevant to this decision, the Bocks alleged causes of action for negligent misrepresentation and intentional infliction of emotional distress ("IIED") against Travelers and the adjuster. The Bocks alleged that the adjuster falsely told them that their policy did not cover the cost of clean-up and that he either knew the representation was false or was made with reckless disregard for the truth. Further, the Bocks alleged that the actions of Travelers and the

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See SEED and Reg's Registration form at end of Status Report...

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President's Message

Tanya Gonder

CAIIA President

I'm midway through my term as president and spent the past month planning the CAIIA's mid-term business meeting. Aside from other responsibilities, the president is in charge of the fall & spring meetings. This year's spring meeting was held April 25th at the Marriott Hotel in Manhattan Beach.

In keeping with our commitment to education the CAIIA offered a three-hour Ethics class. The course is in full compliance with the Department of Insurance requirements. This offering enables licensed adjusters to satisfy the Ethics requirement in one seating. Why we have to be reminded every two years to be professional, honest & fair is beyond me but that's another article!

Along those lines we heard from this years of-counsel, Gary Selvin, how we are impacted by the recent Bock v. Hansen decision. Attorney Selvin was optimistic this decision wouldn't open the floodgates on this type of litigation.

One of the requirements of the Ethics course is class participation. We had record-level participation which included lively discussion and debate throughout the three hours. I believe the spring meeting was productive and time well-spent.

During a recent lunch with a fellow member we discussed how difficult it is to build a client base. We couldn't imagine placing that relationship in jeopardy because of unprofessional conduct. It's a privilege to represent a client, not a right. The professionals who comprise the CAIIA understand this.

Visit our website and familiarize yourself with our members. We provide professional service throughout California for all your adjusting & consulting needs.

Tanya Gonder

2013/2014 CAIIA President

May 11th

News of and from Members:

THIS IS YOUR NEWSLETTER-WRITE AN ARTICLE

The CAIIA Board encourages you to submit articles for publication in the Status Report. Do you have an interesting or unusual claim? Please write an article about the claim, omitting names, of course and let us show how you resolved a particular problem. We have one member who specializes on mechanical breakdown claims. We have members who do high dollar property loss claims. We have members who handle significant general liability claims. We have one member who specializes in fire loss personal property inventory claims. All of these members can tell a compelling story. Your editor has spoken with all of these members and has been fascinated with their specialties.

Also, does your firm have something new to let the world know? Spread the word through the Status Report.

The Status Report now has a circulation of over 2,000 email addresses. Let the Status Report know . Write to us at harperclaims@hotmail.com. You will be given appropriate credit and your fellow adjusters will be able to learn something new!

Legislation of Interest

Tennessee Congressman Stephen Fincher introduced the Claims Licensing Advancement for Interstate Matters Act (HR 2156) in mid-2013. The bill's goal is to:

(1) Adopt a model independent claims adjuster licensing Act meeting specified criteria, and

(2) Adopt and administer a multi-state examination for an independent claims adjuster seeking to adjust claims in a jurisdiction other than his or her home state.

The bill was assigned to a congressional sub-committee, where it remains pending. According to the website, GovTrack.us, which tracks federal legislation, the bill currently has a nine percent chance of getting past committee and a two percent chance of being enacted.

The CAIIA will continue to monitor legislation of interest to its members and the entire claims community.

Submitted by Peter Schifrin, SGD, Inc.

Northridge, CA.

SPRING

Spring in all its glory is here. At last the hills are emerald green, the daffodils have been in full bloom and the bearded Irises are on display with their myriad of colors. And hope abounds with fans of Northern and Southern California baseball teams thinking this is their year.

Many independent adjusters have been working hard, and that means driving a lot. With eyes always on the road but with keen peripheral vision we are seeing more and more hybrids, particularly Priuses, the number one selling car in California the last two years, as well as electric Nissan Leafs, Teslas and Smart Cars. This is indeed encouraging as we aim to keep the sky it's most brilliant blue.

So, when the electric car is plugged in, what is the source of the electricity? Throughout the United States 37 percent of electricity is provided by coal; in our game changing State an impressive 3.7% of electricity comes from coal. California has 14 percent renewable sources but 53 percent of electricity comes from natural gas. Is there an equally or even greater fuel efficient mode of transportation on the horizon? There may be, if Hyundai, Toyota and Honda succeed in manufacturing the hydrogen vehicle and if the infrastructure is built and the price is right.

Originally scheduled to be introduced in 2015, Hyundai is introducing the Tucson fuel cell hydrogen car this fall. This has been successfully tested in driving tests of over two million miles. We have our fingers crossed!

The Hyundai hydrogen car, which only emits water vapor, and has one-half the carbon of a Prius, is advertised as traveling 270 miles between charges. Unlike the Prius which requires over an hour to charge, the hydrogen car charges in 10 minutes. It will be priced at well below the Tesla with Hyundai offering a 36 month lease at $499.00 per month with $2,999.00 down at signing. It does need a proper infrastructure as in So Cal for example there are currently only nine filling stations, in the Bay Area even fewer.

So who will be the foremost endorsing this and other green innovations: the Hollywood stars, Silicon Valley companies, or will it also be you and me? When we look ten years ahead, better yet 2020, better yet today, do we envision I.A's, businesses and people in our industry being the leaders that we are and owning electric cars and other alternative fuel cars? Can we envision gasoline stations being replaced by alternative fuel filling stations? Do we see the "winds" from the West Coast's California, Oregon and Washington slowly drifting east and connecting us all toward a similar aim? Do we see ourselves day by day appreciating the beauty that nourishes us and as a result increasingly being stewards of our home?

We look forward to innovation and countless ideas springing up around us aimed toward keeping a cool planet cool for the grandchildren's grandchildren.

Your comments and ideas are welcome at: SteveEinhaus@gmail or #415-238-8767

"Blue skies, nothing but blue skies heading our way."

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adjuster were extreme and outrageous in that they abused their position of power over the Bocks to falsely induce them to perform the clean-up, purposely ignored information demonstrating coverage and withheld information from the contractor to justify defendants' pre-determined course of denying payments due under the policy. The adjuster demurred to the negligent misrepresentation and IIED causes of action. The trial court sustained without leave to amend on the basis that the complaint does not, and cannot, state claims for negligent misrepresentation and IIED. The Bocks appealed.

THE APPELLATE COURT'S RULING

The court of appeal reversed and remanded the matter. On the negligent misrepresentation claim, the court of appeal rejected the adjuster's argument that he cannot be personally liable for negligent misrepresentation because he did not owe the Bocks a legal duty. The court of appeal relied upon *Vu v. Prudential Prop. & Cas. Ins. Co*.(2001) 26 Cal.4th 1142 to conclude that, because a special relationship existed between Travelers and the Bocks, and because the adjuster was Travelers' employee, he owed a duty to the Bocks. Further, the court of appeal noted that causes of action for negligent misrepresentation, i.e., the duty to communicate accurate information, arise in two situations: (1) where providing false information poses a risk of and results in physical harm to person or property; or (2) where information is conveyed in a commercial setting for a business purpose. See *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 477. The court of appeal concluded that both settings were present as Mrs. Bock was injured as a result of the adjuster's alleged misrepresentation and that the adjuster's statements were made for a business purpose. The court of appeal also held that an employee can be personally liable for his or her own torts, including fraud. Consequently, the court of appeal held that the Bocks could legally maintain a cause of action against the adjuster and that the Bocks adequately alleged such a cause of action.

On the IIED cause of action, the court of appeal held that, while the Bocks failed to allege reckless and outrageous conduct, they should have the opportunity to amend their complaint based on the Bocks' argument that they could allege additional outrageous conduct, including that the adjuster withheld information from the contractor to ensure that the contractor's report would support a pre-determined decision to deny coverage. Further, the Bocks argued that they could allege facts that show the adjuster abused the relationship of power over them and that he knew they were susceptible to injuries through mental distress. In light of the Bocks' contentions, the court of appeal reversed the trial court's ruling to allow the Bocks to amend their IIED claim.

EFFECTS OF THE RULING

Following on the California Supreme Court's ruling in *Vu*, this decision emphasizes the special relationship or unequal bargaining position inherent in the insurer-insured relationship and establishes that the insurance adjuster, though not a party to the contract of insurance, is still potentially liable for independent torts against the insured. Policyholders can maintain causes of action for misrepresentation and IIED against insurance adjusters acting in the course of their employment for an insurance carrier in those instances in which the adjuster makes knowingly false statements regarding coverage which result in harm to the insured or such statements are made for a business purpose.

Insurance Gaps Threatens Ride Share Industry

Credit to Tyson and Mendes, San Diego, CA

Ride-sharing firms, such as Uber, Lyft and Sidecar, provide smartphone applications that connect people who need rides with drivers of personal, non-commercial vehicles. Such firms, categorized as Transportation Network Companies (TNCs) by the California Public Utilities Commission (CPUC), are growing in popularity as a more convenient, sometimes more affordable, alternative to traditional taxis. However, a deadly New Year's Eve accident has brought glaring insurance gaps to light, which could create a major setback for the burgeoning TNC industry.

CPUC's Insurance Requirements
In September 2013, the CPUC determined that TNCs are subject to CPUC jurisdiction and established rules and regulations for TNCs, including an insurance requirement that provides the following:

"TNCs must hold a commercial liability insurance policy that is more stringent than the CPUC's current requirement for limousines, requiring a minimum of $1 million per-incident coverage for incidents involving TNC vehicles and drivers in transit to or during a TNC trip, regardless of whether personal insurance allows for coverage..." (Emphasis added).

In establishing this insurance requirement, Mark J. Ferron, Commissioner of the CPUC, stated, "We have specified our expectations for the attributes of insurance. Now the insurance market will determine the best approach to ensure that there is coverage for passengers, drivers, and third-parties at all times while these vehicles are operating on a commercial basis." However, determining exactly when the TNC vehicles and drivers are covered by the $1-million policy could end up being settled by the California judicial system, not the insurance market, as the CPUC's TNC insurance requirement is vague as written.

Liu v. Uber Technologies (CGC14536979, California Superior Court, San Francisco)
On New Year's Eve 2013, an Uber driver struck and killed 6-year-old Sofia Liu who was crossing a San Francisco street with her family. Because the driver was not carrying any passengers at the time, Uber claims the driver was not covered by Uber's insurance policy. On January 1, 2014, Uber released a statement in which it acknowledged the driver was "a partner of Uber," but stated the accident "did not involve a vehicle or provider doing a trip on the Uber system."

The Liu family filed a lawsuit against Uber on February 21, 2014, alleging wrongful death and negligence. The Liu family contends the driver, Syed Muzaffar, was logged into the Uber network when the accident occurred. Mr. Muzaffar had previously picked up a passenger, and evidence suggests he was waiting to be contacted by another passenger when he turned into an intersection and struck Sofia and her family as they were walking in the crosswalk.

The disputed facts of this case highlight the flaws of the CPUC's TNC insurance requirement, which leaves application of the required $1 million per-incident coverage open for debate. Until regulation catches up, similar cases are sure to arise, presenting a common question: Who pays when something goes wrong?

Coverage Gaps
Representatives of Uber, Lyft, and Sidecar all claim they comply with the CPUC insurance requirements. Uber, valued at $3.5 billion, has long insisted the insurance it provides its drivers is sufficient to cover accidents. The California Department of Insurance is unconvinced, however, and recently posted a notice to TNC drivers, warning them of potential gaps in their insurance, stating:

"While TNCs are required to maintain $1 million in liability insurance, TNCs are not required to have medical payments coverage, comprehensive, collision, uninsured/underinsured motorist (UM/UIM) coverage or other optional coverages."

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Consequently, a TNC's liability policy does not have to provide coverage for bodily injury to the TNC driver, damages to the TNC driver's vehicle, or bodily injury or physical damage caused by an uninsured or underinsured motorist.

The Department of Insurance further warned TNC drivers of potential coverage gaps in their own personal auto policy. Most standard personal auto policies contain exclusions for livery. Thus, insurance companies might deny coverage to TNC drivers. The Department of Insurance suggests that TNC drivers consider purchasing a commercial policy, which covers medical payments, comprehensive, collision, and UM/UIM. TNC drivers will no doubt be reluctant to follow such advice, as commercial coverage can be as much as 10 times more expensive than personal auto policies.

Under the current system, TNC drivers without a commercial policy, like Mr. Muzzafar, could potentially be left holding the bag when an accident occurs.

Conclusion

As the startup TNC industry has thrived, regulation has lagged, leaving individuals bearing the risk. Accidents such as the *Liu* case will no doubt force change, which could present itself in the form of either insurance regulation or the end of the ride-sharing industry.

Employers can be liable for Drunk Employee's Car Accident

Credit to Tyson and Mendes, San Diego, CA

As Employers begin to plan their spring/summer workplace events which may involve alcohol, we wanted to remind everyone of a recent appellate decision that serves as a cautionary tale for all and provide some useful tips.

In *Purton v. Marriott International, Inc.* (2013) 218 Cal. App. 4th 499, the Employer decided to throw a holiday party for its employees at its Hotel. The managers decided that each party attendee would receive two drink tickets. They planned to serve only beer and wine. An employee attended the party snuck in his own flask of liquor. Even though the Hotel had a two drink ticket limit, the General Manager for the Hotel's restaurant started acting as bartender at the party, and was observed serving hard liquor (which had been taken from the Hotel's liquor supply) to the employees including filling the same employee's flask with hard liquor. The employee left the party while intoxicated and arrived home safely. However, this same employee later left his home to drive a fellow drunk co-worker home. During this second outing, the employee struck another vehicle and killed its driver. In a subsequent lawsuit, the employer argued that it should not be vicariously liable for the actions of the employee. The employer moved for summary judgment on the basis that the employer's potential liability under the doctrine of respondeat superior ended once the employee arrived home from the party. The trial court granted the employer's motion for summary judgment on these grounds.

On appeal, the Court of Appeal reversed the judgment in favor of the employer. According to the Court, the employer may be held liable for an employee's torts if the proximate cause of the injury occurred within the scope of employment. It is irrelevant that foreseeable effects of the employee's negligent conduct (here, the car accident) occurred at a time the employee was no longer was acting within the scope of employment. The employer served alcohol and the consumption of alcohol supposedly boosted morale between employer and the employee. The employee became intoxicated at the employer's party. According to the court, there was no legal justification to cut off the employer's liability simply because the employee managed to make it home safely after the party. Accordingly, the judgment in favor of the employer was reversed.

It is important to note that the appellate court did not determine that Marriott was liable as a matter of law for its employee's negligent actions; rather, the court of appeal remanded the case back to the trial court for consideration of whether the employee's conduct was so unforeseeable that his employer should not be held responsible.

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Tips To Avoid Potential Liability At A Workplace Social Event

Although the *Purton* case is an extreme case, Employers do not want to find themselves in the same situation. The Appellate Court in *Purton* actually commented on ways that the Employer could have lessened its risks, by doing the following:

1. Having a policy prohibiting the smuggling of alcohol into its party;
2. Serving drinks for only a limited time period and serving food;
3. Enforcing its drink ticket policy; or
4. Eliminating the risk all together by forbidding alcohol.

We also suggest the additional ways to lesson an Employer's risks:

1. Provide complimentary taxi rides to employees with access to alcohol at a company-sponsored event;
2. Have a no-tolerance alcohol/drug policy and carefully consider the extent to which the employer wishes to deviate from that policy for social or client events;
3. Close the open bar. Make it a cash bar to keep everything under control; or
4. Hire a professional bartender, who knows when to stop serving patrons. Don't rely on supervisors to chaperone the party, as they should not be charged with monitoring employee alcohol consumption.

Please also note that none of these options (other than forbidding alcohol entirely) would have necessarily released Marriott from liability in the *Purton* case, although the court may have reached a different decision if Marriott had engaged in more stringent measures to prevent excessive alcohol consumption at a company-sponsored event, including sticking to its drink ticket limit.

May Pole Celebrations

While not celebrated among the general public in the United States today, a Maypole Dance nearly identical to that celebrated in the United Kingdom is an important part of May Day celebrations in local schools and communities .Often the Maypole dance will be accompanied by other dances as part of a presentation to the public.

TV Trivia:

In *Mad Men* season 3, Donald Draper becomes involved with his daughter Sally's elementary school teacher, Suzanne Farrell, whom he first saw leading her students in an outdoor maypole dance (in "Love Among the Ruins").

Source: Wikipedia

CAIIA 2014 Educational Events

As an authorized California DOI education provider (CDI# 198351), the CAIIA will be presenting its annual education series including:

1) Certifications for the CA Fair Claim Settlement Practices (**FCSPR**) and Seminar on Special Investigation Unit Regulations (**SIU**) (CDI# 279573 for 2 CE hours). Recertification required every year.

2) Seminar for the Evaluation of Earthquake Damage (**SEED**). (CDI# 279570 for 8 CE hours). Recertification for EQ required every 3 years.

   a) Included in the **SEED** program is the training and certification required by CCR, Title 10, Chapter 5, Subchapter 7.5.1, Article 1, §2695.40 through 2695.45 and Insurance Code 10089.3. Those regulations set forth the requirements of Insurance Adjuster Training for Evaluating Earthquake Damage as required for all adjusters who evaluate earthquake claims.

   b) Includes the **FCSPR** and SIU certifications at the **SEED** locations.

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

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Fees (circle one): **FCSPR/SIU** SEED

CAIIA Member fee	$40.00	$100.00
Ins. Co. Employee fee	$50.00	$120.00
Non-Member I/A fee	$60.00	$199.00*

(SEED course includes fee for FCSPR/SIU Reg's)

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

Richard Kern
CAIIA Education Provider Director
c/o SGD
3530 Camino Del Rio North, Suite 204
San Diego, CA 92108

~Questions? Call Richard Kern @ (619) 280-7702
or via email at : tim@tpwclaims.com

Schedule for SEED locations:

Registration	7:30 a.m.	to	8:00 a.m.
FCSPR & **SIU** Seminar	8:00 a.m.	to	10:00 a.m.
SEED Seminar	10:00 a.m.	to	5:00 p.m.

Schedule for Reg's Only locations:

Registration	8:30 a.m.	to	9:00 a.m.
FCSPR & **SIU** Seminar	9:00 a.m.	to	11:00 a.m.

(***Anyone wishing to come to the SEED locations for only the Reg's recertification program should note the earlier start time)***

FCSPR, SIU & SEED SEMINARS (check one)

_____**July 10, 2014**
Brea: Embassy Suites
900 E. Birch St.
Brea, CA 92821 *map link*

FCSPR/SIU ONLY SEMINARS:

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900 E. Birch St.
Brea, CA 92821 *map link*

_____**June 12, 2014**
Chatsworth: SGD, Inc.
(Los Angeles) 9171 Gazette Ave.
Chatsworth, CA 91311 *map link*

_____**June 12, 2014**
Emeryville: Everyville Conference Center
2200 Powell Street *map link*
Emeryville, CA 94608
Conference Room D-2nd Floor

_____**June 04, 2014**
San Diego: American Technologies
8444 Miralani Dr. map link
San Diego, CA 92126

_____**June 13, 2014**
Fresno: Law Offices of McCormick Barstow
7647 N. Fresno Street map link
Fresno, CA 93720

Please visit **www.caiia.com** for more information.

**CAIIA agrees 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 attending with a cap of $160.00 per firm.*

Featured speakers scheduled for the Seminar for the Evaluation of Earthquake Damage (SEED)* to include:

Morgan Griffith, PE.
Exponent Failure Analysis Associates

Exponent®
Engineering and Scientific Consulting

Kevin Hansen, Esq.
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP

McCORMICK BARSTOW
ATTORNEYS AT LAW

Mr. Dan Dyce, CPCU, RPA
CEA Earthquake Response Manager
California Earthquake Authority (CEA)

CEA CALIFORNIA EARTHQUAKE AUTHORITY

Douglas Jackson, RPA
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Peter Schifrin RPA
CAIIA Past President
SGD, Inc.

Mr. Jeff Caulkins, AIC, AMIM, RPA
John S. Rickerby Company
CAIIA Past-President

Fair Claims Regulations Presenters:
Sterrett Harper, Harper Claims Service, Inc.
Richard Kern, SGD, Inc.
Pete Vaughan, Vaughan & Associates
William Mackenzie, Walsh Adjusters

(* As of Press Time)

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Seminar for the Evaluation of Earthquake Damage

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Seminar on CA Fair Claims Settlement Practices Regulations plus Seminar on Special Investigation Unit Regulations

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