

## Professional Malpractice for failure to Procure full benefit of UIM & UM benefits

Credit to Haight, Brown & Bomesteel, Los Angeles CA

In *Lederer v. Schneider* (No.B276266, filed 4/19/18), a California appeals court ruled that the statute of limitations on a cause of action for professional malpractice in failing to procure the full amount of uninsured/underinsured motorist (UM) coverage requested does not begin to run until the plaintiff suffers actual injury, which for underinsured motorist coverage is the time when the UM insurer pays its limit that is less than had been requested by the insured.

In *Lederer*, the defendant was an accounting firm performing financial management services for the plaintiffs. This included procuring insurance for the plaintiffs' family, with \$5 million in UM coverage. However, only \$1.5 million in UM coverage was actually procured.

The family's adult son had a serious motorcycle accident with an underinsured driver in February 2010. In January 2012 the other driver's insurer paid its \$15,000 limit. In June 2012, the plaintiff's own insurer tendered the balance of its \$1.5 million in UM coverage.

The plaintiffs sued the accounting firm in March 2013, alleging damages because of the son's inability to collect more from the family's own insurer. Plus, the mother alleged that she suffered damages because the diminished UM benefits forced her to support the son.

The accounting firm moved for summary adjudication, arguing that the lawsuit was time-barred because the cause of action had accrued shortly after the accident, when the plaintiffs first learned that the limits were lower than requested. The trial court agreed on the ground that the statute of limitations for accounting malpractice is two years, and begins to run when a plaintiff has knowledge of or should suspect that injury was caused by wrongdoing. The trial court found that the UM insurer's actual payment of its lower limits was irrelevant in light of the fact that the mother had learned of the accounting firm's failure to obtain the correct amount of coverage just after the accident.

The appeals court reversed. The court said that for a professional malpractice claim, including failure to procure coverage, "[t]he statute begins to run when (1) the aggrieved party discovers the negligent conduct causing the loss or damage and (2) the aggrieved party has suffered actual injury as a result of the negligent conduct." (Quoting *Apple Valley Unified School Dist. v. Vavrinek, Trine, Day & Co.* (2002) 98 Cal.App.4th 934, 942.) Continued on page 4

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**President's Message**

Hello, I hope you are enjoying the spring weather, which up here in South Lake Tahoe is still a little cool. Our spring storms seem to have a little snow component. So, just to shake things up, I took a little time off and traveled to Hawaii. It was a great time and my chaperone (Ellen) made sure that there was not a whole lot of office commuting. Unfortunately, coming straight from the mountains to the sea shore in shorts, I am sure you could see me in satellite imagery.

We had our mid-term meeting last month and we have started the process of updating and amending our bylaws. We hope to have this process completed soon so we can move toward expanding our membership. Thank you to all the members that took the time to attend! **Please mark your calendars for the Annual meeting to be held September 21, 2018 in Berkeley, CA.** More details will follow.

We are scheduling our certifications classes for Fair Claim Settlement Practices and Evaluation of Earthquake Practices. Consider participating in this DOI approved class. The lessons are not just in the material presented, but in the participant interaction. We will be sending out the notices by email as the locations are scheduled.

As you know, each month I am asking a past CAIIA President to share their observations of this organization and their views of change. This month I have asked Sharon (Glenn) Hayward, who was the CAIIA president in 2006-2007, to write this month's President's message. When I contacted Sharon, she was willing to take the time to update us in her career. Please take the time to reach out to our past presidents to reconnect if you have lost touch. Stay tuned to see who is next!

See you next month!

CAIIA President 2017-2018

**Paul Camacho**

**CAIIA President 2017-2018**

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Paul Camacho  
CAIIA President



**NEWS FROM AND FOR OUR MEMBERS**

**SAVE THE DATE**

The CAIIA is proud to be exhibiting at or sponsoring the following upcoming events:

- May 31 SEED (Brea)- see registration in this Status Report
- August 28-30 Claims Conference of Northern Ca., Squaw Valley
- September 21 CAIIA Annual Meeting, Berkeley, CA

Thank you Paul for reaching out to me for the Past President’s message. My name is Sharon (Glenn) Hayward and I was the President of CAIIA in 2006-2007. It must have been karma as I was just rearranging my office a few days before your call and stopped to admire (and dust) my Past President’s plaque.

I started in the insurance adjusting industry in 1985 when I begged my dad, John Glenn (John Glenn Adjusters & Administrators, Inc.) to hire me as an adjuster. He refused at first because he was afraid of sending me into the “bad areas,” but after some persistent badgering he finally agreed and hence a career was born. It was also my dad, a former CAIIA member and President (1979-1980) who encouraged me to become involved in CAIIA which eventually led me to get on the Board.

In 1995, my dad retired and I became CEO of John Glenn Adjusters & Administrators. We enjoyed a successful business until finally selling it in 2012. After a few years working for another TPA, I was offered an exceptional opportunity to start up the claims division for a general agent specializing in commercial trucking in Livermore, CA. We have grown from a two person claims operation to over 15 employees in just under 3 years. I sometimes miss the old days, but I love the new challenges and opportunities I have been given.

Although no longer active in the CAIIA, I have fond memories of our meetings and conventions meeting some great people and still keeping in touch with some whom I met along the way.

I’m happy the CAIIA continues to flourish and maybe one day I will be back.

Sharon (Glenn) Hayward  
CAIIA Past President (2006-2007)



P.S. to Peter Schifrin you may have been the youngest President at the time, but I still hold the distinction of the second woman, second father-child, and first father-daughter to hold the position of CAIIA President.



**Happy Mother’s Day!**

Continued from page 1

And according to the *Lederer* court, the “suffered actual injury” element had not been satisfied outside of two years, even if the mother had “discover[ed] the negligent conduct.”

The *Lederer* court pointed out that without actual injury there is no cause of action in tort – “[t]he mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence.” (Quoting *Budd v. Nixen* (1971) 6 Cal.3d 195, 200.) And according to the *Lederer* court: “plaintiffs did not suffer the damages alleged to be caused by Gursey—diminished benefits under the underinsured motorist coverage—until Jonathan received that diminished benefit payment in June 2012.”

The court pointed out that under the UM statute and applicable case law, a right to underinsured motorist benefits does not even arise until after the tortfeasor’s insurer has paid its limits and exhausted coverage. (Citing Ins. Code, § 11580.2(p)(3) and *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1057.) So as a preliminary matter, the son did not even have a right to UIM benefits until after he settled with the other driver’s insurer in January 2012. And the *Lederer* court ultimately concluded that:

“[B]ecause the insurance coverage at issue is underinsured motorist coverage, and Jonathan’s right to that coverage did not accrue until 2012 due to statutory restrictions, Jonathan’s actual injury did not occur until he received the limited benefits payment of \$1.5 million.... A cause of action accrues when it is complete with all of its elements. Damages is an element of the torts alleged in this case. Jonathan did not incur actual damages arising from Gursey’s negligence until June 2012, when he recovered \$1.5 million from the underinsured motorist policy instead of the higher amount he allegedly would have received in the absence of Gursey’s negligence.”

### DOI Press Release

#### Brawley Woman Sentenced to Disability Insurance Fraud

**IMPERIAL COUNTY, Calif.** - Teresa Baker, 60, was sentenced yesterday in Imperial County Superior Court to 30 days in jail, 60 days home detention, three years formal probation, and ordered to pay restitution of \$124,029 after fraudulently collecting monthly payments on disability insurance while working full-time at three different employers.

"Thanks to our hard working detectives another fraudster has been brought to justice," said Insurance Commissioner Dave Jones. "We will continue to work with our district attorney partners to aggressively investigate and prosecute those who try and game the system."

Baker claimed an injury to her back in October of 1998 after a fall while employed by Valley Independent Bank in El Centro. Due to the alleged injury, Baker claimed to the insurer, she was unable to work. The California Department of Insurance launched an investigation after receiving a referral from the Standard Insurance Company claiming that Baker had been working from May 2007 through October 2013 while collecting disability benefits.

The investigation revealed that Baker collected more than \$100,000 in disability payments she was not entitled to. During this same time, Baker worked for the Brawley Public Scales, Sun Community Federal Credit Union, and the Brawley School District as a substitute teacher.

Baker was arrested on June 30, 2017 and subsequently pleaded guilty to one felony count of insurance fraud on January 4, 2018. This case was prosecuted by the Imperial County District Attorney's Office.

## Impaired Property Exclusion

**Credit to: Haight, Brown and Bonesteel, Los Angeles, CA**

In *All Green Electric v. Security National Ins. Co.* (No. B279456, filed 3/19/18, ord. pub. 4/17/18), a California appeals court ruled that the impaired property exclusion barred coverage for a claim based on the insured's failure to tighten a loose bolt that resulted in stray magnetic fields interfering with operation of an MRI machine and allegedly threatening the health of personnel.

All Green was an electrical contractor hired to perform wiring for an MRI unit installation. Stray magnetic fields interfered with the unit's operation. Efforts to remediate the problem included installing shielding and ultimately relocating the unit to another room. An expert finally determined that a bolt left loose by All Green was causing the magnetic field, which disappeared when the bolt was properly tightened. The facility sought damages for negligence, including costs for unnecessary modifications and repairs, payments to outside sources for substitute mammography testing, operational costs and expenses, damage to reputation, lost profits, and the loss of an HMO contract.

Security National denied coverage based on the policy's impaired property exclusion – "Damage To Impaired Property Or Property Not Physically Injured," which states that coverage does not apply to "Property damage to 'impaired property' or property that has not been physically injured, arising out of: (1) A defect, deficiency, inadequacy or dangerous condition in 'your product' or 'your work;' or (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms."

An exception stated that "[t]his exclusion does not apply to the loss of use of other property arising out of the sudden and accidental physical injury to 'your product' or 'your work' after it has been put to its intended use."

"Impaired property" was defined as "tangible property, other than 'your product' or 'your work,' that cannot be used or is less useful because: a. it incorporates 'your product' or 'your work' that is known or thought to be defective, deficient, inadequate or dangerous; or b. You have failed to fulfill the terms of a contract or agreement; if such property can be restored to use by the repair, replacement, adjustment or removal of 'your product' or 'your work' or your fulfilling the terms of the contract or agreement." "Your work" was defined as "[w]ork or operations performed by you or on your behalf" as well as "[m]aterials, parts or equipment furnished in connection with such work or operations."

Coverage was denied on the ground that the MRI unit was "impaired property" in that it "could not be used because All Green failed to fulfill the terms of its contract (by tightening the bolt and/or meeting the standard of care)," but could be "restored to use by simply tightening the bolt, i.e., by 'adjustment' of All Green's work." Alternatively, Security General asserted the MRI unit was "property that was not physically injured" and the exclusion applied because "[t]he failure to tighten the bolt was a 'defect, deficiency, inadequacy . . . in . . . 'your work.'" Finally, Security General argued the exception for "sudden and accidental physical injury" did not apply because there had been no physical injury, and the fact that the bolt was loose was not sudden or a result of an event that occurred after it was "put to its intended use."

The trial court agreed and granted summary judgment, and the appeals court affirmed. The appeals court rejected All Green's claim there was a duty to defend because there might have been some cause other than its own negligence. The court pointed out that if All Green was negligent, the exclusion would apply, and if All Green was not negligent, it would have no liability or damages whatsoever: "Because SNIC would have no obligation to indemnify regardless of whether All Green was negligent, either because there was no liability or because the liability fell under the impaired property exclusion, SNIC had no duty to defend. (Citing *State Farm v. Drasin* (1984) 152 Cal.App.3d 864.)

The *All Green* court went on to reject a sudden and accidental theory, saying it was too tenuous and farfetched to argue that that damage somehow occurred after All Green's work was put to use. And the court confirmed that without coverage or a breach of contract, there was no bad faith.



# CAIIA 2018 Educational Event



## Evaluation of Earthquake Damage (SEED)

### Southern California

May 31, 2018

Embassy Suites Brea [map link](#)  
900 E. Birch Street  
Brea, CA 92821

### Northern California

June 27, 2018

HSNO Accounting [map link](#)  
1330 Broadway Ste 430  
Oakland, CA 94612

### SEED Seminar (inc FCSPR) (8 hrs CA CE)

**Time:** Registration 7:30- 8:00 AM  
SEED Training 8:00- 5:00 PM

**Cost:** CAIIA Member \$ 75.00  
Ins Co Employee \$ 100.00  
Non-Member I/A \$ 150.00

### FCSPR Seminar Only (2 hrs CA CE)

**Time:** Registration 7:30- 8:00 AM  
FCSPR & SIU 8:00- 10:00 AM

**Cost:** CAIIA Member \$ 25.00  
Ins Co Employee \$ 35.00  
Non-Member I/A \$ 50.00

## FOR YOUR CONVENIENCE PAY ONLINE :

*Click here for payment via all major credit cards*  
*Paypal account not required*



Attendee Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Attendee Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Email completed form to: rkern@sgdinc.com or  
Fax to: (619) 546-8723

**Breakfast and Lunch provided with SEED  
Class. Breakfast only for FCSPR**

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. Recertification required every three years. (CDI#279570 for 8 CE hours) Includes the FCSPR and SIU certifications.

**Questions: Call Richard Kern at (619) 280-7702 or via email at [rkern@sgdinc.com](mailto:rkern@sgdinc.com)**

## On The Lighter Side...

### **Kids Talk About God & Their Mother** (Kids say the darndest things...)

The following are different answers given by school-age children to the given questions:

#### **Why did God make mothers?**

- 1.-She's the only one who knows where the scotch tape is.
- 2.-Think about it, it was the best way to get more people.
- 3.-Mostly to clean the house.
- 4.-To help us out of there when we were getting born.

#### **Why did God give you your mother and not some other mom?**

- 1.- We're related.
- 2.- God knew she likes me a lot more than other people's moms like me.

#### **What kind of little girl was your mom?**

- 1.- My mom has always been my mom and none of that other stuff.
- 2.- I don't know because I wasn't there, but my guess would be pretty bossy.
- 3.- They say she used to be nice.

#### **How did your mom meet your dad?**

- 1.- Mom was working in a store and dad was shoplifting.

#### **Why did your mom marry your dad?**

- 1.- My dad makes the best spaghetti in the world. And my mom eats a lot.
- 2.- She got too old to do anything else with him.
- 3.- My grandma says that mom didn't have her thinking cap on.

#### **What makes a real woman?**

- 1.- It means you have to be really bossy without looking bossy.

#### **Who's the boss at your house?**

- 1.- Mom doesn't want to be boss, but she has to because dads such a goofball.
- 2.- Mom. You can tell by room inspection. She sees the stuff under the bed.
- 3.- I guess Mom is, but only because she has a lot more to do than dad.

#### **What's the difference between moms and dads?**

- 1.- Moms work at work and work at home, and dads just got to work at work.
- 2.- Moms know how to talk to teachers without scaring them.
- 3.- Dads are taller and stronger, but moms have all the real power 'cause that's who you gotta ask if you want to sleep over at your friend's.

#### **What's the difference between moms and grandmas?**

- 1.- About 30 years.
- 2.- You can always count on grandmothers for candy. Sometimes moms don't even have bread on them!

#### **Describe the world's greatest mom?**

- 1.- She would make broccoli taste like ice cream!
- 2.- The greatest mom in the world wouldn't make me kiss my fat aunts!
- 3.- She'd always be smiling and keep her opinions to herself.

#### **Is anything about your mom perfect?**

- 1.- Her teeth are perfect, but she bought them from the dentist.
- 2.- Her casserole recipes. But we hate them.
- 3.- Just her children

#### **What would it take to make your mom perfect?**

- 1.- On the inside she's already perfect. Outside, I think some kind of plastic surgery.
- 2.- Diet. You know, her hair. I'd dye-it, maybe blue.

#### **If you could change one thing about your mom, what would it be?**

- 1.- She has this weird thing about me keeping my room clean. I'd get rid of that.