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Even with a good-faith order in hand, it may be risky for a defendant to fund its settlement while the remaining parties are still litigating.

Credit to: Carey L. Cooper, Klinedinst, PC, San Diego, CA

Multi-party lawsuits cannot always be settled globally with all defendants. While any one defendant may still settle with the plaintiff to carve itself out of the case, such settling defendants must carefully maneuver through a minefield of potential indemnity issues. While good faith determinations provide settling defendants some cover from equitable indemnity claims, a court's good-faith order is not necessarily bulletproof. Any such order is subject to appeal, and our state courts are presently split as to whether good faith orders can only be appealed immediately following their issuance, or whether they might still be appealable much later in time after the remaining litigants have tried the case to final judgment.

When a court grants one party's good faith motion over opposition from a non-settling defendant, that settling party should not rush to sign the check. There is a lingering question which had best be considered: is it safe to fund this settlement now, while the other parties are still litigating?

Since the better practice is to postpone payment until a good-faith ruling becomes final and non-appealable, the natural question becomes: when does the ruling become non-appealable? While it seems like a simple question, our state courts are split as to whether a good faith ruling has to be appealed by a petition for writ (within 20 days following notice of the court's good-faith order), or whether a good faith-ruling will remain appealable until after trial (within 60 days after final judgment is delivered to those parties taking the case through trial).

In *Maryland Casualty Co. v. Andreini & Co.* (2000) 81 Cal.App.4th 1413, the Second District held that a good faith order could be challenged by a writ petition as well as a later, post-judgment appeal. *Id.*at pp. 1425-1426. Broadly speaking, these decisions siding with *Maryland Casualty* rely on the language of California Civil Code § 877.6 (e), which says that a party "may" file a writ petition, rather than "shall" or "must." The line of reasoning was followed by the Third and Fourth Districts in *Wilshire Ins. Co. v. Tuff Boy Holding, Inc.* (2001) 86 Cal.App.4th 627 (Third District) and *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939 (Fourth District).

There are very few cases siding with the settling defendants in support of the position that the more immediate writ relief is the only relief available. *Main Fiber Products, Inc. v. Morgan & Franz Ins. Agency* (1999) 73 Cal.App.4th 1130 (Fourth District) and *O'Hearn v. Hillcrest Gym & Fitness Center, Inc.* (2004) 115 Cal.App.4th 491(Second District) are the primary examples. Concerned with the finality of settlements, these cases provide that a court's good faith order should become final and non-appealable when the 20-day post-ruling period expires without any writ having been filed or, alternatively, when the writ itself is denied and becomes non-appealable.

With this split in authority, settling defendants must be aware that their good faith determinations only shield them from equitable indemnity claims when they are final and non-appealable and, under the current state of law, that time may not come until after the remaining litigants have taken the case through trial and judgment.

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President's Message

Tanya Gonder

CAIIA President

How do you become an independent adjuster? I've been asked this question a few times and my response is the same, experience. Sure you can take insurance and adjusting courses to understand the basics but clients rely on IA's to know more than the basics.

Independent adjusters typically have double-digit years in the industry. Many of us started our careers with major personal lines or commercial insurers. Some of us began our careers with national independent adjusting firms.

After a few companies, promotions, layoffs and closed doors due to mismanagement we find ourselves establishing dba's, llc's and corporations. We contact former associates, connect with new ones and an independent adjuster is born. We are experienced, continually educated and bring a wealth of knowledge to nearly any claim we encounter.

It's a challenging endeavor. When the economy is unstable we are personally affected. The use of outside services is the first thing companies trim during economic uncertainty. Client loyalty is not as dependable as it used to be.

Despite the challenges, the best reward is knowing we provide a valuable service and steer our own ships.

Hope you had a wonderful Memorial Day!

Tanya Gonder

2013/2014 CAIIA President

Who thinks up these holidays? LOL

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!

Next month.. Your article could be here!

Trends in the Law
Credit to Willis & DePasqualle, Orange, CA

California's court system, the largest in the world serving over 38 million people, has been the victim of unprecedented budget cuts. Many counties, such as Los Angeles, have been forced to cut necessary staff members such as court reporters, clerks and research attorneys, forcing judges to not only handle more cases, but serve as their own research attorneys as well. As a result, we have noticed a trend in California courts, particularly Los Angeles County Superior Court, whereby judges are liberally granting motions to compel discovery requests with serious sanction awards. Due to these judicial cut" backs, judges seemingly have less time to hear discovery motions and pressure attorneys to informally resolve discovery disputes. Thus, when these disputes are not resolved informally, and motions are brought, the recent trend is to sanction the losing party. This practice has a chilling effect on future disputes. As a result, parties need to closely consider the implications of bringing motions to compel in the future, and determine if the information sought to be obtained #or not produced in litigation$ is really necessary and a good faith reason exits for non-compliance with the discovery request.

Viking Ships

Aha! Now that the headline has grabbed your attention please read on. We will address ferries using sails in San Francisco Bay later, but first, let's touch on electricity.

Our past articles have largely featured various modes of transportation, mainly cars. This is because at first glance we thought adjuster's carbon footprints would be largely related to vehicle emissions. However, lo and behold, it actually turns out that electricity is the largest source of emissions.

According to the EPA, electricity produces 33 percent of emissions, and transportation 27 percent. And, nationwide, over 70 percent of our electricity comes from burning fossil fuels, mostly coal and natural gas. So what changes are at hand?

Here in California there is a mandate for 33 percent of renewable energy by 2020. So how are we doing? As of 2011, Pacific Gas & Electric served 21 percent of its retail sales with renewable energy, Southern California Edison 21.1 percent and San Diego Gas & Electric 20.8 percent. It is anticipated this we will fly past this 2020 goal.

The new trend is due to the rapidly expanding use of solar-produced electricity, and California leads the way in this area. Elon Musk, the CEO of Tesla, is behind Solar City which blankets rooftops with solar panels. The solar industry is thriving with Solar City and other solar providers seeing their stock increase in value over 50% in the last year.

Here just north of San Francisco in Marin County customers are offered green energy through electricity provider Marin Energy Authority ("MEA"). . They provide 50 percent or more of competitively priced electricity from renewable energy sources s such as solar, wind, bioenergy, geothermal and hydro. MEA has over 100,000 customers and San Francisco is considering adding their name to that list.

With each article we enjoy featuring new ideas and in particular California innovation. Such is the case in San Francisco Bay where a $355,000 grant has been awarded by pollution regulators to a group of sailors and entrepreneurs (some we believe with Viking lineage) whose aim is no less than making San Francisco the first city in the nation to run wind powered ferry services. The massive sails would work in tandem with diesel engines and reduce the vessels fuel use and emissions by as much as 40 percent. This is seen as a very Bay Area – centric thing.

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

A 16 year old Unlicensed Driver May still be Considered a Permissive User

Credit to Tyson and Mendes, La Jolla, CA

In *Landeros v. Torres* (2012) 206 Ca.App.4th 398, the California Court of Appeal held that an unlicensed driver with no insurance of her own could be a permissive user under an automobile policy providing coverage to the vehicle owned by her father. The driver of the vehicle (Landeros) was a sixteen year old unlicensed driver. Landeros suffered serious and permanent brain damage after the vehicle she was driving was struck by a vehicle driven by Torres. Landeros was in a coma for several weeks and spent over nine months in a rehabilitation facility. Torres was at fault for the accident and admitted liability. At the time of the accident his blood alcohol content was .10. He was arrested, pled no contest to driving while intoxicated and was sentenced to 32 months in prison. This matter went to trial on damages only and the jury awarded *Landeros* $31,656,208 which Iincluded *$21 million in non-economic damages*.

In *Landeros*, the insurance carrier attempted to assert Proposition 213 as a defense against the purported insured who was unlicensed and had used her father's car. The carrier was attempting to deny coverage under the permissive user provision of the policy.
Can an unlicensed driver recover non-economic damages? What about California Prop 213?
As a reminder, Prop. 213 should always be considered in any claim involving an automobile.

Here is a basic review:
• Prop. 213 prevents recovery of non-economic damages if the driver was convicted of driving under the influence of alcohol or drugs (unless you're at fault, insured was also driving and was convicted of driving under the influence of alcohol or drugs);

• Prop 213 prevents recovery of non-economic damages if the claimant owned the vehicle and it was not insured or was the operator of the vehicle (the claim in this case) and the vehicle was not covered by insurance;

 Prop 213 does not apply in a wrongful death case unless an heir (and only to that heir) was the owner or operator of the vehicle (and uninsured) but does apply if the driver is specifically excluded under an automobile liability policy by name;

• The statute also applies to claims arising out "use" of the vehicle, which includes stopping, parking, and exiting the vehicle, or the claim that a roadway condition was a cause of the accident;

• Punitive damages are recoverable regardless of whether a claimant would be barred from recovery of non-economic damages.
It is important to consider these requirements when settling claims brought against your insured by drivers without liability insurance or those driving under the influence of alcohol or drugs because they are forbidden from obtaining non-economic damages (i.e. pain and suffering).

In *Landeros*, the Court noted that the insurance policy did not have a licensure requirement as part of the definition of permissive user. The Court questioned whether one would even be valid. It was undisputed that Landeros was given permission to use the vehicle at the time of the accident. The insurance policy did not contain an exclusion that would eliminate coverage for unlicensed drivers. The Court concluded that there is no policy provision that would relieve the insurer from providing liability coverage for an accident where Landeros negligently operated the vehicle. There are a long line of cases that establish that California has a strong public policy that requires insurance policies to provide coverage for permissive users, and any attempt to limit that coverage will be rejected.

In another case where the insurance policy provided that the permissive user must be "legally operating" the vehicle, the Court still found that coverage existed for an unlicensed driver. The Court liberally construed the term "legally operating" and applied the rule that exclusions in insurance policies must be strictly construed against the insurer.
It appears as though in California, the insurance policy must contain the express language that a permissive user must be a licensed driver and/or contain a specific exclusion for unlicensed drivers. Otherwise, as opined by the Court in *Landeros*, an unlicensed driver will be considered a permissive user and able to recover non-economic damages.

Establishing the Elements of Equitable Tolling and Equitable Estoppel

Credit to Low, Ball & Lynch, San Francisco, CA

Under the principle of equitable tolling, a statute of limitations will not bar a claim in cases where the plaintiff, despite use of due diligence, could not or did not discover material facts about the injury or the identity of the defendant until after the expiration of the limitations period, and the defendant already had notice of the claim. Equitable estoppel, on the other hand, may preclude a defendant from raising the statute of limitations defense when the defendant's promises, threats or representations actually induced the plaintiff to forbear filing a lawsuit. This case considered the interplay of the two principles in a case where plaintiff was injured and had a workers' compensation claim pending against her employer, who was also the owner of the property where her injury occurred.

In May, 2008, Linda Hopkins fell from an outdoor balcony at the offices of her employer, Perfect Smile Dental Ceramics, Inc. Due to her injuries, she was unable to work. Jurek Kedzierski and Margo Kedzierski own Perfect Smile and also own the office building in which Perfect Smile is located. Shortly after the accident, Hopkins began receiving workers' compensation benefits. In April, 2009, she filed a claim with the Workers' Compensation Appeals Board because of disagreements regarding Perfect Smile's liability for various types of benefits, e.g., temporary disability indemnity, reimbursement for medical expense. In October of 2009, Hopkins' counsel sent a demand letter to defendants. Golden Eagle Insurance, the insurer for defendants, informed Hopkins' counsel that it was investigating the claim. In March of 2010, Golden Eagle notified Hopkins' counsel it was denying the claim.

In September, 2010, Hopkins filed an action for negligence/premises liability. She asserted that the two-year statute of limitations (Code of Civ. Proc. § 335.1) on her personal injury claim had been tolled while she pursued her April, 2009 workers' compensation claim. She also alleged that the defendants were equitably estopped from asserting a statute of limitations defense based on settlement negotiations that she claimed had taken place prior to her filing of the civil complaint. The trial court denied Hopkins' request for a jury trial with respect to whether equitable tolling and/or equitable estoppel applied, held a bifurcated bench trial on these issues, and determined that neither doctrine applied. The trial court concluded the complaint was not timely filed, and entered judgment in favor of the defendants. On appeal, Hopkins claimed the trial court erred in denying her request for a jury trial on the issues of whether the equitable doctrines applied. She also asserted that the trial court erred in determining neither doctrine applied.

The Court of Appeal affirmed that if an action is one in equity and the relief sought depends on the application of equitable doctrines, the parties are not entitled to a jury trial. The issues of whether equitable tolling or equitable estoppel applied were equitable issues for the court to decide. The Court noted that the equitable tolling of statutes of limitations was designed to prevent unjust and technical forfeitures of the right to trial on the merits when the purpose of the statute of limitations – timely notice to the defendant of plaintiff's claim – had been satisfied. Citing the California Supreme Court decision of *Elkins v. Derby*, the Court stated that in order to prove the applicability of the equitable tolling doctrine, a party must establish "timely notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff." Tolling rules are to be liberally applied to situations in which the plaintiff has satisfied the notification purpose of a limitation statute. In the instant case, it was undisputed that defendants received notice of the need to begin to investigate the facts that formed the basis of Hopkins' claims well within the applicable statute of limitations period. The Court disagreed with the trial court's ruling that in order for equitable tolling to apply, Hopkins was required to have been unsuccessful in seeking workers' compensation benefits. The matter was remanded to the trial court to make factual findings as to whether Hopkins demonstrated the three required elements of equitable tolling.

In regard to equitable estoppel, four elements must ordinarily be proven: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. The Court rejected Hopkins' contention that there had been a misrepresentation as to who owned the building. They also rejected Hopkins' contention that the defendants told her "they would take care of [her] until [she] came back to work." The defendants each testified that they did not make such representations. The Court concluded there was substantial evidence in the record to support the trial court's determination that the doctrine of equitable estoppel did not apply.

COMMENT

The decision highlights the need to place potential tortfeasors and their insurance carriers on notice of any potential claims. Failure to provide timely notice may prevent the applicability of the equitable tolling doctrine.

Death and Taxes

Credit to Teddy Snyder, WCMediator.com

In this world, nothing is certain but death and taxes.– Benjamin Franklin

Death of an injured worker who is receiving benefits through the California workers compensation system stops income benefits. Per California Labor Code 4700, "Neither temporary nor permanent disability payments shall be made for any period of time subsequent to the death of the employee." Life expectancy is uncertain. An injured worker who is concerned about the injured worker's family's future welfare may want to get the value of those benefits now. The way to do this is by entering a Compromise and Release settlement.

An injured worker can create a potential estate for the injured worker's family by cashing out the value of future benefits. Commonly both future indemnity and medical benefits are cashed out, but in some cases only the indemnity is cashed out and medical is left open. The question then becomes how to value those benefits. Parties need to forecast the cost of future medical care, including the effect of inflation. Rather than a dollar-for-dollar payment, it may be appropriate to apply a discount for present value. In other words, a dollar in hand today is worth more than the promise of one to be paid years in the future. Parties may differ on the proper discount rate to use for this purpose. In cases where payments are due for the lifetime of the injured worker, disagreements can arise about the injured worker's life expectancy. Compromises can be negotiated on all these issues.

A Compromise and Release may not be appropriate for an injured worker who is likely to spend a lump sum inappropriately. Likewise, if the worker would be unable to obtain medical care outside the Workers Compensation system, entering a Compromise & Release may be a mistake. These issues can be defined and explored in mediation.

Happy Father's Day!

CCNC

Monday Afternoon Session opens three-game series

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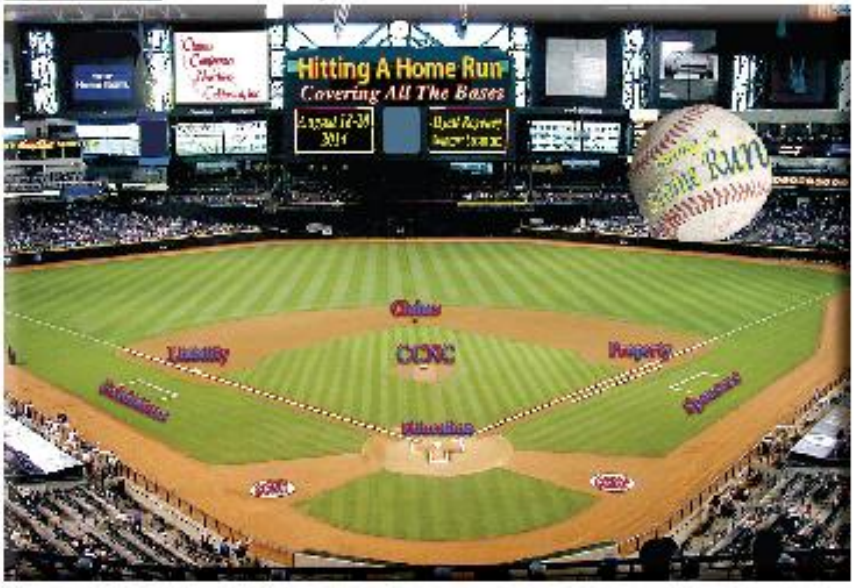
Keynote Address from former major-leaguer

Adam Greenberg

One Last At Bat

We don't always get a second chance to do what we love in life.



In the long-standing tradition of the CCNC, the 21st annual event will focus on continuing education for P&C Insurance Claims Professionals.

A new agreement with the Hyatt Regency Downtown Sacramento keeps CCNC at its home playing field, bringing smiles to many fans.

A twilight opener Monday afternoon, August 18th, from 4-6pm, will precede the main event. Day games will be held Tuesday, August 19th and Wednesday August 20th, including CE classes raising players to Allstar status.

An evening double-header features a fine dinner banquet, and new wrinkle on evening fun, to be announced very soon.

With Exhibit booths now all but sold out for the season, vendor focus has turned to securing the best sponsorship opportunities at this time.

Attendee Registration is now open, with special preferred seating for carrier claims professionals and indepedent adjusters.

PLAY BALL!!!

On the Lighter Side...

The Washington Post's Mensa Invitational once again invited readers to take any word from the dictionary, alter it by adding, subtracting, or changing one letter, and supply a new definition.

Here are some of the winners:

1. Cashtration (n.): The act of buying a house, which renders the subject financially impotent for an indefinite period of time.

2. Ignoranus : A person who's both stupid and an asshole.

3. Intaxicaton : Euphoria at getting a tax refund, which lasts until you realize it was your money to start with.

4. Reintarnation : Coming back to life as a hillbilly.

5. Bozone (n.): The substance surrounding stupid people that stops bright ideas from penetrating. The bozone layer, unfortunately, shows little sign of breaking down in the near future.

7. Giraffiti : Vandalism spray-painted very, very high

8. Sarchasm : The gulf between the author of sarcastic wit and the person who doesn't get it.

9. Inoculatte : To take coffee intravenously when you are running late.

10. Osteopornosis : A degenerate disease. (This one got extra credit.)

12. Decafalon (n.): The grueling event of getting through the day consuming only things that are good for you.

14. Dopeler Effect: The tendency of stupid ideas to seem smarter when they come at you rapidly.

15. Arachnoleptic Fit (n.): The frantic dance performed just after you've accidentally walked through a spider web.

16. Beelzebug (n.): Satan in the form of a mosquito, that gets into your bedroom at three in the morning and cannot be cast out.

17. Caterpallor (n.): The color you turn after finding half a worm in the fruit you're eating.

The Washington Post has also published the winning submissions to its yearly contest, in which readers are asked to supply alternate meanings for common words.

And some of the winners are:

1. Coffee, n.. The person upon whom one coughs.

2. Flabbergasted, adj. Appalled by discovering how much weight one has gained.

3.. Abdicate, v. To give up all hope of ever having a flat stomach.

4 Esplanade, v. To attempt an explanation while drunk.

6.. Negligent, adj. Absentmindedly answering the door when wearing only a nightgown.

8. Gargoyle, n. Olive-flavored mouthwash.

9. Flatulence, n. Emergency vehicle that picks up someone who has been run over by a steamroller.

10. Balderdash, n. A rapidly receding hairline.

12. Rectitude, n. The formal, dignified bearing adopted by proctologists.