

AUGUST 2005

CAIIA is at the CCNC

The Claims Conference of Northern California is being held on September 13 and 14, 2005 at the Oakland Marriott.

The CAIIA will have a booth there. We need volunteers to be at the booth for various times throughout the two-day seminar. If you volunteer one shift (or more) on a particular day, the CAIIA will pay for your attendance at the conference for the day(s) you volunteer.

Either call or e-mail Sterrett Harper to volunteer some of your time for the conference. His e-mail and phone are harperclaims@hotmail.com and (818) 953-9200.

Claims Adjuster Education Regs Almost Final – 06/27/05

The California Department of Insurance has submitted regulations establishing minimum training requirements for claims adjusters and medical bill reviewers to the Office of Administrative Law, the last step before adoption.

The OAL has 30 working days to review the submitted regulations. If they find any conflicts with state statute, the office can send it back to the Department of Insurance for modification, which would open another 15-day comment period, said R. Brian Bugsch, a strategic planning and policy analyst for the Insurance Department.

Bugsch said the regulations will take effect 30 days after approval by the OAL, which means a mid-September effective date. The regulations have not been changed from the version that was submitted for public testimony in March.

The regulations would:

*Require claims adjusters who adjust both medical and indemnity claims to complete at least 160 hours of training, of which at least 120 hours must be conducted in a classroom with an instructor.

*Require at least 80 hours of training for claims adjusters who adjust only medical claims, at least 50 hours of which must be in a classroom.

*Require at least 80 hours of training for claims adjusters to be certified as instructors, provided that such training is completed within six months of the claims adjuster beginning to adjust claims that include indemnity benefits.

*The training required shall be completed within a 12-consecutive month period, during which time a claims adjuster trainee may adjust claims under the supervision of an experienced claims adjuster.

*Beginning May 1, 2005, every insurer shall require a minimum of 30 hours of post-certification training every two years for all experienced claims adjusters and 20 hours of post-certification training every two years for all experienced medical-only claims adjusters.

*Require medical bill reviewers to complete 40 hours of training, at least 30 hours of which shall be conducted in a classroom by an instructor. No more than 10 hours of training may be on-the-job training.

*Require that the training be completed within a 12-month period.

*Beginning May 1, 2005, require medical bill reviewers to complete a minimum of 16 hours every two years of post-certification training.

To see a copy of the regulations, go to: <http://www.20.insurance.ca.gov/epubacc/REG/51670.htm>

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**California Association of
Independent Insurance Adjusters**



*An Employer
Organization of
Independent
Insurance Adjusters*

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Status Report Now Available by E-mail

If you would like to receive the *Status Report* via e-mail please send your e-mail address to info@caiiia.org.

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■ **PRESIDENT'S MESSAGE**

As I write this month's President's message, it's hard to imagine that I am nearing the final leg as President of the CAIIA. Where has the time gone? Being President of this fine organization has been an honor and an experience I truly have enjoyed. And running a business and balancing the commitments of this and other endeavors, at times, makes me feel like I am a carnival juggler. Yet, to the unknowing out there, successful claims adjusters do this juggling act every day. When you think about how many claims we handle simultaneously, many of which are complicated and/or stressful, I sometimes look back and wonder how we do it! Although inside adjusters have it tough, I tend to believe that the field adjusters may have one of the hardest jobs. They must set up appointments to meet the requirements of everyone, must deal with traffic congestion, try to keep focused on the investigation or adjustment when they get to their assignment, do that multiple times throughout the day, and somehow find the time to write estimates, prepare reports, mount and ID photo's, return calls, and all the other things we do. No wonder we juggle so much...I'm not sure there are that many hours in the day to get everything done that is expected of us. And, of course, add in the time for car and equipment maintenance, purchasing or securing supplies, breaks/meals, and the like...now I know there isn't enough time in the day to get all that done.

I want to thank all members who found the time to submit their membership renewals so promptly. Membership in the CAIIA has its rewards too. We will be exhibiting our booth at the CCNC in September and, of course, at our annual convention in October. All members should look for our new ad in Claims Magazine soon (listing all current members).

As an exciting feature to our Annual Convention, John Postava of Simsol, our new partner in providing property estimating software to CAIIA members, has



agreed to teach members and insurance company claims personnel guests on how to use their program. This four hour program will jump start members who are now using Simsol.

Next month, the RPA Board of Directors will be meeting. This fine organization, which gives recognition to adjusters who have met the highest credentials and level of education, continues to grow and meet the needs of the claims adjuster arm of the insurance industry. As relayed to members recently, I will be representing the CAIIA membership and all RPA members on the RPA board. I look forward to hearing from any of you who have ideas or issues you would like me to share with the rest of the Board. All organizations, including the CAIIA, grow and become stronger when members communicate their views, good or bad, and create the synergy that drives people to be their best. I have already heard from many of you and I look forward to hearing from the rest of you...whether you are a CAIIA member, a RPA designation holder, or someone who is interested in elevating the professionalism of your claims career.

DOUG JACKSON, RPA
President - CAIIA 2004-2005

■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Civil Procedure – Subrogation – Construction Defect

Hodge v. Kirkpatrick Development, Inc., Court of Appeal, Fourth District (June 21, 2005)

Under what circumstances may an insurer pursue subrogation rights against third parties by intervening in a lawsuit? In this case, State Farm Insurance Company issued Plaintiffs Douglas and Kylie Hodge a homeowner's insurance policy for their home in Laguna Beach California. The policy granted subrogation rights against third parties.

In December 2002, the Hodges submitted a claim to State Farm under the [policy for water and mold damage to their house allegedly caused by the negligence of third parties, including Defendant Kirkpatrick Development, Inc. The Hodges made a total demand to State Farm of \$1,699,680. State Farm denied the Hodges claim for mold damage and paid the Hodges approximately \$150,000 for water damage.

In September 2003, the Hodges filed a construction defect lawsuit against Kirkpatrick and other contractors, who helped construct the home. In November 2003, the Hodges filed a complaint for Bad Faith against State Farm. The trial court in Orange County denied State Farm's motion to consolidate the construction defect lawsuit and the bad faith lawsuit. State Farm then moved for leave to intervene in the construction defect lawsuit to file a subrogation complaint. Plaintiffs and nearly all Defendants in the construction defect action opposed State Farm's motion. The trial court denied the motion on the grounds that the "complication" of adding State Farm to the action outweighed any prejudice to State Farm by not allowing intervention.

On appeal, State Farm argued that it had a right to intervene, pursuant to Code of Civil Procedure, section 387. Under section 387(b), a nonparty has a right to intervene in a pending action if the person seeking intervention claims an interest relating to the property of transaction which is the subject of the action, and that person is so situated that the disposition of the action may, as a practical matter impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by existing parties.

The Fourth District Court of Appeal held that State Farm had subrogation rights by operation of law and under the terms of the policy. Contrary to the argument of the Hodges, State Farm was not just a creditor. Rather, State Farm stepped into the Hodges shoes and, to the extent it made payments under the policy, had the same rights as the Hodges against the various Defendants in the construction defect lawsuit. An insurance carrier with a right of partial subrogation has a direct pecuniary interest in an insured's action against responsible third parties.

The Court further ruled that disposition of the construction defect lawsuit would "as a practical matter impair or impede" State Farm's ability to protect its subrogation rights within the

meaning of section 387(b). Plaintiffs and Defendants in the construction defect action contended that State Farm could pursue a separate lawsuit against the responsible third parties, or could wait for the Hodges to collect on their lawsuit and then recoup payments directly from the insureds. The Court decided that either of these options could impede or impair State Farm's right to pursue subrogation.

In addition, the Fourth District held that State Farm's interests were not adequately represented in the construction defect action by the Hodges. The Hodges had an incentive to prove their losses resulted from mold damage caused by Defendants' negligence and a disincentive to prove their losses resulted from the water damage. Finding that the requirements of sections 387(b) had been met, the court of Appeal reversed the trial court order denying State Farm's motion to intervene.

COMMENT

This case makes clear that an insurer has a statutory right to intervene in a third party lawsuit to seek reimbursement of insurance payments made to an insured.

Coverage – Malpractice Policy – Claims Made and Reported

Walter R. Root v. American Equity Specialty Insurance Company, Court of Appeal, Fourth District (June 28, 2005)

A "claims made and reported" policy is generally interpreted very strictly with respect to the reporting of claims. This case examines whether equity can excuse those provisions under certain circumstances.

Walter Root was insured by American Equity Specialty Insurance Company under a legal malpractice policy from February 28, 1998 to February 28, 1999. On February 25, 1999, Farideh Jalali filed a malpractice suit against Root. On that date, Root received a telephone call from a person identified as an employee of a legal journal who sought Root's reaction to this suit. Root thought the call was a prank. On March 2, Root read an article in the legal journal describing the lawsuit. He immediately notified American Equity of the claim. American Equity denied coverage because Root had not reported the claim during the policy period. Root defended himself and sued American Equity for breach of contract. American Equity obtained summary judgment based upon the lack of reporting during the policy.

The policy required the claim to have been made in and reported by the insured during the policy period. The policy obligated the insured to notify the company as soon as he became aware of any act, which could form the basis of a claim. If notice was immediately given during the policy period, coverage was extended for any lawsuit subsequently filed, even after the policy period. American Equity did not offer an extended reporting period endorsement, which would have ex-

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■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

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tended the time to report claims.

On appeal to the Court of Appeal, the judgment was reversed. The Court stated that a claim was made against Root during the American Equity policy period. The filing of the lawsuit, even if unserved, fit the definition of a claim against Root. The issue before the Court was whether a report of the claim, after the expiration of the policy and where the insured was unaware of the claim prior to the policy's expiration, with no extended claim reporting endorsement, was fair under all the circumstances.

The Court noted that under traditional "occurrence" policies, the notice – prejudice rule applies. This rule holds that late notice is not a defense to coverage as long as there is no prejudice to the insurer. The notice – prejudice rule has not traditionally been applied to "claims made and reported" policies. Under a "claims made and reported" policy, the reporting provision is a condition precedent of the policy. Most professional malpractice insurance has been traditionally written on a "claims made and reported" basis. This different form of coverage affects the costs of such policies.

The Court stated that a condition precedent could be excused where an inequity would result. This is different from an application of the notice – prejudice rule. The notice – prejudice rule requires that an insurer show that the delay in reporting has prejudiced it. This is a fairly inflexible standard. However, application of an equitable excuse to the condition precedent would not result in the application of a bright line test. Rather, its application would vary with particular facts of each case. In this case, the fact that the insured could not buy an extended reporting endorsement was one factor of significance. Other factors were whether Root had sufficient time to conduct an investigation as to whether indeed a claim had been made against him or whether he simply delayed in reporting the claim until after he received confirmation of it. The Court felt that the record indicated sufficient facts to support an equitable excuse for not reporting the claim. Therefore, summary judgment should not have been granted. The Court reversed the case and returned it to the trial court to conduct further hearings to determine whether an equitable excuse should be applied to the condition precedent required for reporting during the policy period.

COMMENT

The "claims made and reported" policy has been traditionally considered a policy that requires strict compliance with the reporting requirements. This decision, which the court acknowledged is narrow, provides an exception to that rule.

Torts – Attorney Fees – Property Damage Claim

Campbell v. Allied Van Lines, United States Court of Appeals, Ninth Circuit (June 7, 2005)

The Carmack Amendment to the Interstate Commerce Act (49 U.S.C., section 14706) establishes motor carrier liability for loss or injury to property a carrier transports. The Carmack Amendment preempts many state and common law claims against carriers in order to create a "national scheme" of carrier liability for goods lost or damaged during interstate transit.

In this case Plaintiffs Edward and Susan Campbell contracted with a number of moving companies, including Defendants Allied Van Lines and Mayflower Transit, Inc. to transport their household goods from Arizona to Florida. The goods were damaged during the move and the Campbells originally brought suit in state court. Defendants removed the case to Federal District court in Arizona on the basis of federal question jurisdictions arising out the Carmack Amendment. A jury in district court found in favor of Plaintiffs and awarded over \$46,000. Thereafter, the district Court granted Plaintiffs' motion for attorneys' fees of \$15,000, plus costs.

On appeal to the Ninth Circuit Court of Appeals, Defendants argued that there was no statutory basis to support the award of attorneys' fees. Defendants maintained that pursuant to the Carmack Amendment, Plaintiffs were not entitled to attorneys' fees, because they did not first engage in arbitration.

Section 14708 of the Carmack Amendment sets forth that carriers must offer arbitration to shippers, such as the Campbells. Section 14708(d) states that in any court action to resolve a dispute between a shipper of household goods and a carrier, the shipper shall be awarded reasonable attorney fees if the shipper submits a timely claim; the shipper prevails in the action and a decision resolving the dispute was not rendered through arbitration within the period set forth in the Carmack Amendment. Defendants maintained that Plaintiffs' refusal to participate in arbitration precluded the awarding of attorney fees.

The Ninth Circuit disagreed and held that nothing in section 14708 limits attorneys' fees to shippers who first engage in arbitration. Contrary to the argument of the carriers, the Court determined that the attorney fee provision applies to "any court action", not just arbitration. The Court also rejected the Defendants' argument that its' decision runs contrary to Congress' intent to encourage arbitration. Looking to the plain meaning of the statute, the Ninth Circuit determined that if Congress intended to limit attorneys' fees to arbitration proceedings, it would have explicitly said so. The Ninth Circuit, therefore, affirmed the District court ruling.

COMMENT

This decision could have a potentially negative impact on carriers, because it may encourage shippers to bypass cost-efficient arbitration and directly pursue court actions.

Investigation of Alleged Overbilling Lands Encino Chiropractor and Legal Assistant in Jail; If Convicted, Pair Could Face Up to Five Years in Prison

ENCINO – An Encino chiropractor and her legal assistant have been arrested and charged with two counts each of insurance fraud following an investigation by the California Department of Insurance (CDI) Fraud Division.

Chiropractor Nasrin “Nancy” Hadizadeh Fathi, 43, and legal assistant Behrouz Beck Saffary, 51, were taken into custody Thursday on charges that they overbilled insurance companies for treatment of patients. The two, both of Encino, were booked at the Los Angeles County Jail and bail was set at \$40,000 each. The Los Angeles county district Attorney’s Office is prosecuting the case.

“Illegally inflating medical treatment bills is a serious problem that hurts all of us by causing higher insurance rates”, said Commissioner John Garamendi. “My Department will continue its pursuit of suspects such as these, and we will prosecute violators to the fullest extent of the law.”

At the time of Fathi’s and Saffary’s arrest, authorities executed search warrants at Valley Spine Institute (the clinic operated by Fathi) and the Law Offices of Karineh Avanesian (the law office utilized by Saffary).

According to investigators, in February 2004, CDI received a complaint that Fathi was over-billing insurance companies for chiropractic treatment that she never performed. Based on the complaint, Fraud Division Investigators initiated an undercover investigation into Valley Spine Institute.

Posing as traffic collision victims, the investigators went to the clinic to seek treatment. Saffary, upon the initial visits, would allegedly have the investigators sign forms so they would be represented by the Law Offices of Karineh Avanesian.

The undercover operatives were treated by Fathi on no more than three occasions each. Upon their last visit to the clinic, Fathi and Saffary had the undercover investigators sign numerous sign-in sheets to give the appearance that the chiropractic treatment lasted much longer, and was more extensive, than it actually was.

The investigation found that Fathi sent chiropractic bills to insurers, and that settlement demands from the law office were later received by the involved insurance companies.

During the case, investigators found that inflated bills or settlement demands were sent to at least two companies; 21st Century Insurance Company received medical bills and a demand for settlement in the amount of \$18,770. This covered two investigators’ “injuries” and chiropractic treatment. Liberty Mutual Insurance Company received medical bills and a demand for settlement in the amount of \$13,310 for one investigator’s “injuries” and chiropractic treatment.

The National Insurance Crime bureau, Farmers Insurance Company, 21st Century Insurance Company and Liberty Mutual Insurance Company assisted in the investigation of this case.

■ CAIIA *Calendar*

■ Claims Conference of Northern California

September 13 & 14, 2005
Oakland Marriott
Oakland, CA

■ CAIIA Annual Convention

October 12-14, 2005
Hotel Valencia, Santana Row
San Jose, CA
Contact Steve Wakefield
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2005 CCNC Program of Events

Tuesday, September 13th

9:00 am – 10:00 am Welcome by Keynote Speaker: Edward Hochull, Esq.
Defense attorney and NFL Referee will tackle:
The tremendous difference between handling the big claims and the small ones.

10:20 am – 11:40 am Workshop Sessions:

- I. **Slip, Trip and Fall**
*Michael von Haenel • Mark Bates, Esq.
John Thurber, Esq.*
- II. **Catastrophe Claims**
*John Wrigley • Kenneth Shuman
Susan Waller*

1:15 pm – 2:45 pm General Session: **Mock Trial Part I**
*A liability oriented trial involving a fictional DUI case Raymond Deutsch, MD •
Michael von Haenel • Michael Kind, Esq. • David Sanders, Esq. • Richard Vale-
rian, Esq.*

3:10 pm – 4:40 pm General Session: **Mock Trial Part II**

Wednesday, September 14th

9:00 am – 10:00 am Workshop Sessions:

- I. **Ethics a Guide for Insurance Professionals**
Ulises Castellon, CPCU • Greg Harwell, CPCU • Sandra Masters CPCU
- I. **Subrogation**
William Webster, Esq. • Kim Gunther
- II. **Roofing: The Good, The Bad and The Ugly**
Tony Milo

10:20 am – 11:40 am Workshop Sessions:

- I. **Combating Insurance Fraud**
*John Standish • Craig Pusser
Eric Von Geldman, Esq. • Tom Fraysse, Esq.*
- II. **Cyber Risks and the Theft of Intellectual Property**
*Michael Diliberto • Michael Lamprecht
Robert Underwood*

1:15 pm – 2:45 pm

Workshop Sessions:

- I. **Marine Claims**
*Kent Clancy, Esq. • Samuel Ruby, Esq.
Rebecca Galloway*
- II. **Construction Defect – Anatomy of DC Lawsuit**
*Patricia Davis • Charles Harris, Esq.
Eileen Ridley, Esq.*

2005 CCNC Registration Form
Navigating the Course of Change

Attendee Name: _____

Company: _____

Address: _____

City, State, Zip: _____

Phone: _____

FAX: _____

E-mail: _____

Business Type: _____

- Carrier Personnel & Self Insureds** - \$35 one day ~ \$65 two days
- IA's, TPA's, Agents/Brokers** - \$45 one day ~ \$75 two days
- Attorneys** - \$125 one day ~ \$175 two days
- All other attendees** - \$250 both days

If one day, please indicate: Tues. or Wed.

Make check payable to: CCNC, and mail with completed registration form(s) to:

CCNC Registration
9845 Horn Road, Suite 270
Sacramento, CA 95827

Additional registration questions please contact Corby Schmautz at cschmautz@jbaia.com

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PayPal®

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