CAIIA Status Report

AUGUST 2007

Steve Tilghman Dies

It is with a sad heart that we report the unexpected death of Steve Tilghman, past president of the CAIIA (2002-2003). He will be missed by all who knew him.

Steve has been in the claims industry for over 34 years. Most recently, he formed his own company, Claims professional Resources. He was an expert in the claims industry and has taught numerous classes with CAIIA, CCNC, and other claims associations . . . including being a co-founder of the SEED Program. He has been involved with countless policy appraisal panels serving both as an Appraiser and an Umpire.

His soul mate, Nancy Ramey, tells us that Steve would want his friends to remember him by relating old stories, thinking good thoughts, sharing a glass of wine . . . and not to be sad. That last item will be a tough one!

The Status Report and all of the CAIIA send our condolences to Steve's family and friends.

RWB Legal Reflections

Submitted by Rudlof, Wood & Barrows - Emeryville

Extension of Genuine Dispute Doctrine to Third Party Liability Cases

By Edward P. Murphy, Esq.

The recent case of *Delgado v. Interinsurance Exchange of the Automobile Club of Southern California 07* C.D.O.S. 5898 is of interest as it examines defenses an insurer may raise when denying a duty to defend.

In *Delgado*, the insurer Automobile Club of Southern California ("ACSC") denied coverage and refused to defend its insured, Craig Reid, in an action for personal injuries after its insured allegedly assaulted Jonathan Delgado. Reid later settled with Delgado, and agreed to a stipulated judgment and an assignment of his rights against ACSC in return for a covenant not to execute on the remainder of the judgment. Delgado then sued ACSC, who demurred contending there was no coverage and that the stipulated judgment was "contrived". The trial court agreed and dismissed the action leading to this appeal.

On appeal, the court quickly resolved that the trial court was wrong in finding no duty to defend. ACSC had denied coverage contending that the

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PRESIDENT'S MESSAGE

When I wrote my article for last month, I did not realize that I would be reminded so quickly of the fragility of life. It is with much sorrow to report that on July 5, 2007, Steven W. Tilghman passed away unexpectedly. Steve has been in the claims industry for over 34 years and most recently formed his own company, Claims Professional Resources. He is the past-president of the CAIIA, 2002-2003 and until his passing remained an active and integral part of the association. He was an expert in the claims industry and dedicated himself to the education and standards in the insurance business. He taught numerous classes with the CAIIA, CCNC and other claim organizations, including being a co-founder of the SEED Program. He has been involved with countless policy appraisal panels serving both as an Appraiser and an Umpire. He was not only a business associate but also a friend. I was fortunate to have the opportunity to work with Steve as we assisted the Department of Insurance in the re-writing of the Independent Insurance Adjusters test. I admired Steve for his knowledge of the business and was always amazed when he was able to pull up some Insurance Code and practically read it from memory. Steve was obviously well thought of not only by family and friends, but also by those he worked with currently and in the past as was shown by those who attended his service on July 12, 2007. What a small circle we travel in as I looked around and saw people that I too had worked with and had not seen in many years. It was said we are put on this earth for a purpose and that while here we leave our footprints in the sand. Steve certainly left his footprints. Maybe that is why he loved his Hawaiian shirts. His presence will be missed and the CAIIA wishes to extend our deepest sympathies to his family.

SHARON GLENN
President - CAIIA 2006-2007

RWB Legal Reflections

Submitted by Rudlof, Wood & Barrows - Emeryville

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assault was an intentional act, and therefore excluded. The appellate court disagreed. The underlying action sufficiently alleged that Reid negligently and unreasonable believed that he was acting in self-defense. For purposes of a demurrer, general allegations are sufficient and a party need not plead evidentiary facts. The allegations apprised ACSC of the potential for coverage, which is all that was required.

The appellate court also considered whether the "genuine dispute" doctrine that had developed in first party cases applied to third party liability cases.[1] The court noted that the doctrine had been extended to third party cases where the issue involved the refusal to indemnity but not to a refusal to defend. After considering this, the appellate court held that the doctrine would only apply to the duty to defend when a legal dispute existed as to coverage but not to factual disputes. Here, the doctrine did not apply because the dispute was factual – *i.e.*, the question was whether the assault was intentional or negligent.[2]

[1] As set out in Chateau Chamberary Homeowners Assn. v. Associated Internat. Ins. Co. (2001) 90 Cal. App.4th 335, 347, an insured does not act in bad faith when it mistakenly withholds policy benefits if the mistake is reasonable or is based on a legitimate dispute as to the insurers' liability.

[2]This case also examined the weight to be given to stipulated judgments coupled with a covenant not to execute. As established in Pruyn v. Agricultural Ins. Co. (1995) 36 Caql.App.4th 500, such judgments create only a rebuttable presumption of liability.

Insurer Cannot Rely on "Genuine Dispute" Doctrine Unless It Has Fully Investigated All Possible Grounds for Coverage

By Stephen R. Barry, Esq.

Jordan v. Allstate Ins. Co., 07 C.D.O.S. 3012, ("Jordan II") is a recent reported decision by the court of Appeal, Second Appellate District, authored by Judge Croskey, In a previous reported decision, Jordan v. Allstate Ins. Co. (2004) 116 Cal.App.4th 1206 ("Jordan I"), the court of Appeal determined that policy language excluding loss involving "wet or dry rot" conflicted with language that provided coverage for an entire collapse of a portion of the building due to "hidden decay". The case was remanded to determine if the facts would show that an "entire collapse" had taken place, so as to afford coverage.

After the case had been remanded, Allstate moved for summary judgement on the authority of Chateau Chamberary Homeowners Assn. v. Associated Internat. Ins. Co. (2001) 90 Cal.App.4th 335, 346, which holds that, where there is a "genuine issue" as to the insurer's liability, there can be no bad faith imposed on the insurer. Allstate argued that the Court of Appeal in Jordan I held that Allstate's interpretation of the policy had been "reasonable", even though the Court ultimately construed the policy language against it and that Chateau Chamberay therefore supported summary judgment. The trial court agreed. The Court of Appeal overturned the summary judgment. It found that Allstate had not pursued an investigation of whether an "entire collapse" had taken place, and instead had merely attempted to rely on the genuine dispute doctrine. The Court held that an insurer cannot claim a "genuine issue" when it has failed to adequately investigate, since it deprives itself of the ability to make a fair evaluation of the claim. Judge Croskey also stressed that the responsibility to fully investigate the claim does not evaporate after litigation has commenced. Breach of the implied covenant of good faith and fair dealing can be based on actions occurring in the midst of litigation – such as Allstate's failure to fully investigate whether there had been an "entire collapse" after the Court had identified the issue in Jordan I.

The case lists eleven instances of failure to fully investigate. Among them were: relying on the adjuster rather than hiring a structural engineer; failing to look for hidden decay that would lead to coverage; and the existence of internal correspondence indicating "collapse" coverage might possibly apply to the loss, without sending a letter to the insured notifying her of the issue.

The decision is of note in specifically finding that the insured can introduce testimony from an industry expert citing various insurer actions that the expert believes violate the Unfair Practices Act and the related California Code of Regulation sections.

The decision is additionally of note in recognizing that the insurer has a duty to other policyholders and stockholders not to dissipate its reserves through the payment of meritless claims. This would lead to increased rates and harm the public. Judge Croskey also reminds trial courts that before allowing the question of punitive damage to go to the jury, the court should view the evidence presented by the insured through the higher "clear and convincing" standard of proof.

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law, San Francisco, CA

Fire Insurance – Amount Payable

Ann Burns v. California Fair Plan , (June 5, 2007), Court of Appeal, Second District

When separate parties have an interest in real property and purchase separate fire insurance policies, this case examines the question whether each can collect for the full value of the residence, despite the fact this would exceed the value of the property.

Ann Burns had a life estate in a residence. Michael Weiss, Trustee of the Kent Burns Trust, held a remainder interest in the property. Ann Burns obtained insurance on her interest from the California Fair Plan. The Trust separately insured its interest through Clarendon National Insurance Company. The residence was destroyed by fire. Both Ann Burns and the Trust submitted claims for the fire. Both obtained estimates for replacement costs of the home around $480,000. The insurers determined that Burns and the Trust should recover on their interest on a pro rata basis. Burns and the Trust filed an action for breach of contract and breach of the duty of good faith and fair dealing. They each sought full recovery for the replacement of the residence on their respective insurance policies. The trial court granted summary judgment to the insurers. Burns and the Trust appealed.

The Court of Appeal affirmed. The Court noted that both Burns and the Trust held a separately insurable interest in the insured property. Burns and the Trust contended the insurers were obligated to fully compensate them for their loss in the fire, even though the combined recovery would double the actual damage caused by the fire.

The Court noted that if the interest of an insured is less than the whole of the property, his right to recover from his insurer is limited by the value of his interest. Each insured had a value in the property that was less than the total value of their combined interest.

The Court stated this case did not involve double insurance because the same person was not insured by both policies. Both policies contained other insurance provision as required by Insurance Code Section 2071. Both provided that the liability of the insurance company would not be greater than the loss sustained by the insured. The "other insurance" provision of Insurance Code Sections 2070 and 2071 set forth a prorate payment of claims even when there was no double insurance and where there were different insureds. These provisions authorized proportionate payment where there is other insurance. In this case, the insurers calculated their proportionate liability by reference to the total coverage between the policies. Coverage was then calculated by comparing the policy limits to the total available coverage. Both insureds were thus fully paid for their respective interest in the property. The combined sum equaled the cost for reconstruction of the property.

The Court therefore concluded that the trial court correctly ruled that the insurers fully paid their obligations under the policies and that summary judgment for the insurers was properly granted. The judgment was therefore affirmed.

COMMENT

This case presents a rather obscure area of law and one not commonly encountered. The case is worth reading for its application of property insurance to this unusual situation.

Evidence - Third-Party Purchase of Medical Lien Does Not Affect Amount Recovered By Plaintiff

Katiuzhinsky v. Perry , (June 29, 2007), Court of Appeal, Third District

An injured plaintiff in a personal injury action cannot recover more than the amount of medical expenses he or she paid or incurred, even if the billed or charged amount might be a greater sum. In this case, the issue was whether the discounted sale of a lien for medical services provided should affect a plaintiff's recovery.

Plaintiffs Konstantin Katiuzhinsky and Vera Kiryukhina were injured in an automobile accident. Plaintiffs received services from medical providers who then asserted liens against any recovery Plaintiffs might have in a third party lawsuit. Some of the providers then sold their liens, at a discount, to a financial services company called MedFinManager California (MedFin). The result was that the medical providers wrote off the balance, but plaintiffs remained liable to MedFin for the entire amount of the medical bills.

Plaintiffs eventually sued the adverse driver Ronnie Perry. Prior to trial, Defendants filed a motion in limine to preclude the introduction of any evidence of medical expenses incurred above the amounts that MedFin paid to Plaintiffs' health care providers to purchase the liens. The trial court granted the motion. At trial, Plaintiffs' evidence of medical bills was restricted to the discount rate that MedFin had paid to the medical providers. The jury returned a verdict of $304,669.19 for Katiuzhinsky, of which $169,669.19 represented medical expenses, and $176,141.91 for Kiryukhina, which included $76,141.91 in medical expenses. Plaintiffs appealed. The Third District Court of Appeal reversed.

In its decision, the Third District reiterated that pursuant to Hanif v. Housing Authority (1988) 200 Cal. App. 3d 635, and Nishihama v. City and County of San Francisco (2001) 93 Cal App. 4th 298, a Plaintiff is only entitled to the amount of medical expenses paid or incurred. In those cases, the plaintiff's medical provider accepted payment from a third party (health insurance carrier) under a contract that the provider would accept the third party's payment as payment in full, discharging the plaintiff from any further liability. In this case, the Court of Appeal reasoned, Plaintiffs remained fully liable to MedFin for the amount of the medical providers' charges for care and treatment. If Plaintiffs were only permitted to claim the discounted amount at trial, but then had to pay the charged amount back to MedFin, Plaintiffs could be undercompensated.

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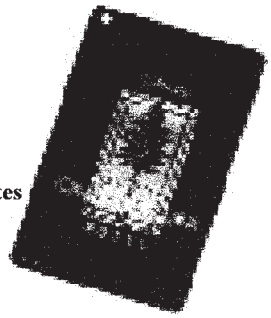
CAIIA REGISTRATION FORM

California Association of Independent Insurance Adjusters
ANNUAL CONVENTION – October 17 & 18, 2007

Disney's Grand Californian Hotel

1600 South Disneyland Drive, Anaheim, CA 92802
(714) 520-5005
Mention California Association of Independent Insurance Adjusters for special room rates

Attendees must make their own hotel reservations.



Your Name _____ Significant Other _____

Company _____

Address _____

Phone _____ Fax _____

E-Mail _____

- ***Association members must purchase a complete registration package. Employees of members are welcome to purchase full or partial events.***
- ***Package includes all events below. CAIIA Member Employees may attend the educational seminars only with a member's purchase of a Registration Package. Alternative spouses' program to take place during meeting time***
- ***Insurance personnel guests (*) may purchase President's Gala Dinner Event and Educational Seminar only.***
- ***Please specify which events you and your significant other/mate will actually attend by placing a check mark in the box next to the event. If you are insurance personnel guest (*), please indicate # in Guest Box below.***

EVENT	COST	# of TICKETS	TOTAL
Registration Package – members with spouse/mate **	$ 250.00	_____	$_____
Registration Package – members w/o spouse **	$ 200.00	_____	$_____
Golf Tournament Dinner/Reception (10/17/07)	$ 50.00	_____	$_____
President's Dinner/Reception/Awards/Installations (10/18/07)	$ 50.00	_____	$_____
Education Seminars including lunch and parking *(available to member employees or insurance company guests only*	$ 35.00	_____	$_____
	Grand Total Payable		$_____

SCHEDULED EVENTS

		Please Show # Attending Events Below:	*You*	*Mate*	*Guest**
10/17		Golf Tournament – mark and we will send you information**	[ ]	[ ]	[ ]
10/17	6:30 P.M.	Tournament Reception/Dinner**	[ ]	[ ]	[ ]
10/18	9:00 A.M.	Education Seminars	[ ]	[ ]	[ ]
10/18	12:00 P.M.	Lunch	[ ]	[ ]	[ ]
10/18	1:30 P.M.	Business Meeting	[ ]	[ ]	[ ]
10/18	6:30 P.M.	Presidents Gala Dinner Event, Awards, & Officer Installations	[ ]	[ ]	[ ]

Please make your checks payable to CAIIA or pay by credit card.
Mail Registration form and payment to:

SGD
9255 Corbin Avenue, Suite 200
Northridge, CA 91324-2401
pschifrin@sgdinc.com

Credit Card: AMEX ____ VISA ____ M/C ____

Cardholder Name_____

Card # _____

Signature: _____

Any Questions, please call or email Peter Schifrin @ 818-909-9090; pschifrin@sgdinc.com

* **We welcome the attendance and participation of insurance company and risk management claims personnel and attorneys at the President's Gala Dinner Event, the Educational Seminars, and Luncheon following seminars.**

** **The Golf Tournament and post-tournament Reception/Dinner are at the Anaheim Hills Golf Course. Tournament fee TBD**

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law, San Francisco, CA

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Further, while Plaintiffs' medical providers could opt to sell their bills to MedFin, they were under no obligation to do so. The Court ruled that a subsequent assignment of a bill to a third party, at a discount, could not result in a decrease in the value of services already rendered. The Court of Appeal felt this was exactly the effect of the trial court ruling.

Finally, the Court held that not only did the trial court's ruling preclude Plaintiffs from recovering special damages for medical expenses above the discounted rate paid by MedFin, the ruling kept the jurors from considering the medical bills as evidence of the reasonable value of medical services. The Court of Appeal held this was a reversible error. The Court of Appeal remanded the case for a new trial on the issue of damages.

COMMENT

Under Hanif and Nishihama, a plaintiff may only claim the amount of medical specials paid or incurred. Further, recent cases have held that a plaintiff may introduce evidence of the "charged" amount of medical expenses, as evidence of the "reasonable" value of the services rendered.

In this case, the Court of Appeal held that the purchase of a medical lien by a third party did not prevent recovery of amounts billed by medical providers, for which Plaintiffs, unlike Hanif and Nishihama, remained fully liable.

When You Need to Know What Really Happened

Submitted by Garrett Engineers, Inc. - Forensic Division

A Balcony Collapse

We read an interesting article in the morning paper about a balcony collapse. Later on, we were assigned the investigation.

The insured's property was a four-story condominium complex with an in-ground swimming pool at the first floor level. Walking up to the building, the fourth floor balcony was clearly visible. While the walls of the balcony were still in place, the main body of the balcony floor had fallen down onto the floor of the third floor balcony, directly underneath. Were one to step out onto the 4th floor balcony, one would have a quick trip, through the gaping hole with jagged edges, onto the third floor balcony.

The partially collapsed balcony floor was supported by three 6-inch deep I-beam section cantilever steel beams projecting from the building. A 9.5-inch by 3-inch outer edge C-channel steel was bolted to the ends of the I-beams. The middle I-beam (off-center from the balcony sides) appeared to have been embedded in the chimneystack, but the extreme side beams could not be discerned as to their point or method of attachment to the building, and may have been similarly cantilevered or may have been attached using a bolted mechanism. A framed wall surround to the balcony sat on top of the outer edge C-channel steel and the side I-beams. The wall was coated with stucco. The floor of the balcony was formed using a 2-inch thick concrete slab poured integral with formed steel trough members approximately 1 – 2 mm thick, with those members spanning between the building and the channel edge beam.

The balcony floor concrete was reinforced with steel reinforcing bars (rebar) in the 2-inch thickness using 1/2-inch rebar. Beneath the trough members, forming an enclosed space, was a further former layer of rebar, under and attached to which had been laid a steel wire mesh, to which the stucco ceiling surface below the balcony had been applied. The rebar appeared to have spanned between the edge beam and the building in support of that mesh. Drainage from the slab was taken through a 2-inch by 4-inch scupper to a rainwater hopper attached to the outside edge of the balcony and then to a down pipe.

The observed condition of the rebar, the trough members and the steel cantilever beams and edge beam was that of corroded steel. The trough members appeared to have disintegrated and to be almost completely comprised now of rust, with the rebar and steel beams having an unknown lateral extent of corrosion, but directly observable as at least 1 mm depth of corrosion product to the rebar and light corrosion to the beams. It was our expert's opinion that such corrosion had taken at least five years to form in the confines of the enclosed floor space of the balcony structure. What remained of the edges of the concrete floor of the balcony had no waterproofing finish to it. The unit below the affected unit had suffered penetration of water from the balcony level above, as evidenced by staining and efflorescence around their chimneystack.

The balcony floor fell because the floor of the balcony had been exposed, without sufficient protection, to the elements of the weather, allowing penetration of the permeable concrete slab by accumulating rainwater. The rainwater percolated through the concrete to the unprotected steel trough and rebar and caused corrosion to occur in that steel. Once the trough and rebar were sufficiently corroded, they could no longer support the weight of the concrete floor. The floor then fell to the balcony below it. The direct cause of the failure was the lack of waterproofing on the surface of the concrete deck.

CALIFORNIA ASSOCIATION OF INDEPENDENT INSURANCE ADJUSTERS

First Annual Golf Tournament

Anaheim Hills Golf Course
6501 Nohl Ranch Road
Anaheim Hills, CA 92807

October 17, 2007 • 10:00 a.m. Check-in
11:00 a.m. Putting Championship • 12:00 p.m. Shotgun Start

"Join us for our First Annual Golf Tournament"

Player Participation ~ $135 *per player* **$115** *member price* Includes: Green Fees, Cart, and Dinner Buffet

1. _____ Company _____
2. _____ Company _____
3. _____ Company _____
4. _____ Company _____

(Player Participation / Foursomes sold on first available basis)

Dinner Buffet Only ~ $50 *per person* **$45** *member price* Includes: Dinner Buffet and post-golf awards presentation

1. _____ Company _____
2. _____ Company _____

Sponsorship Opportunities

Layered Charitable Sponsorships - Juvenile Diabetes *(check box)*

☐ **Diamond ~ $1,000** ☐ **Platimum ~ $750** ☐ **Gold ~ $500** ☐ **Silver ~ $250** ☐ **Bronze ~ $150**

☐☐☐☐☐☐☐☐☐☐ ***Steve Tighlman Memorial Scholarship Fund*** **~ 10 available @ $150 each**

Tournament Sponsorships *(check box)*

☐ **Dinner ~ $1,000** ☐ **Bar ~ $1,000** ☐ **Shirt ~ $1,500 ea. (2)** ☐ **Hat ~ $500 ea. (4)** ☐ **Photo ~ $800**

☐ **Tee ~ $500** SOLD OUT ☐ **Hole - in - one ~ $500** SOLD OUT ☐ **Driving Range ~ $150** ☐ **Putting Contest ~ $150** SOLD OUT

Players _____ ***@ $135 ea. ($115 members)*** = $ _____
Dinner Buffet Only _____ ***@ $50 ea. ($45 members)*** = $ _____
Sponsorships _____ = $ _____
Total Amount Enclosed = $ _____

Member price dead-line: August 10th, 2007 ~ Application subject to verification by CAIIA

Mail completed form and your check payable to CAIIA to:

Jeff Stone
2276 Griffin Way, Suite 105-198, Corona, CA 92879
Questions? Contact: Jeff Stone at (951) 371-8845

The 16 Police Comments were taken off actual U.S. Police car videos around the country:

#16 "You know, stop lights don't come any redder than the one you just went through."

#15 "Relax, the handcuffs are tight because they're new. They'll stretch after you wear them a while."

#14 "If you take your hands off the car, I'll make your birth certificate a worthless document."

#13 "If you run, you'll only go to jail tired."

#12 "Can you run faster than 1200 fee per second? Because that's the speed of the bullet that'll be chasing you."

#11 "You don't now how fast you were going? I guess that means I can write anything I wan to on the ticket, huh?"

#10 "Yes, sir, you can talk to the shift supervisor, but I don't think it will help. Oh, did I mention that I'm the shift supervisor?"

#9 "Warning! You want a warning? O.K., I'm warning you not to do that again or I'll give you another ticket."

#8 "The answer to this last question will determine whether you are drunk or not. Was Mickey mouse a cat or a dog?"

#7 "Fair? You want me to be fair? Listen, fair is a place where you go to ride on rides, eat cotton candy and corn dogs and step in monkey poop."

#6 "Yeah, we have a quota. Two more tickets and my wife gets a toaster oven."

#5 "In God we trust, all others we tun through NCIC."

#4 "how big were those 'Just two beers' you say you had?"

#3 "No, sir, we don't have quotas anymore. We used to, but now we're allowed to write as many tickets as we can."

#2 "I'm glad to hear that Chief(of Police) Hawker is a personal friend of yours. So you know someone who can post your bail."

AND THE WINNER IS . . .

#1 "You didn't think we give pretty women tickets? You're right, we don't. Sign here."