

SEPTEMBER 2006

Have You Had Your Fraud Training? New California SIU Regulations You Only Have Until September 1, 2006 to Comply!

Submitted by *Zalma Fraud Newsletter*

As of October 7, 2005, Subchapter 9, Article 2, starting at Section 2698.30 et seq, Special Investigation Unit Regulations were formally adopted and are now in force. If you are an employee of an insurer who has any business in California and anything to do with claims or underwriting, an independent adjuster or adjusting firm, a managing general agent, or an appointed agent of any insurer doing business in California and were not trained about insurance fraud recognition by the end of September 2005 you and the insurer are in violation of the California Code of Regulations.

The regulations require each insurer to train you annually and to train all new hire within ninety (90) days of hire. A complete Copy of the Regulations is available at <http://www.claimschool.com/siu-regs-10-7-05.pdf>

You can protect yourself, and the insurers you represent, from California Department of Insurance audits and fines by complying with the new Regulations.

If you and your staff have not been trained by the insurer(s) with whom you are employed or who you represent, and if you do not have a training program in force, you, your employer and the insurers you represent are in violation of the new California SIU Regulations. Fines can be assessed of \$5,000 to \$10,000 for each violation. [Section 2698.42 (b)]

The Regulations, at Section 2698.39, require every admitted insurer to train all integral anti-fraud personnel.

Integral Anti-Fraud Personnel include:

1. Claims Handlers;
2. Underwriters;
3. Agents;
4. Policy handlers;
5. Call center staff;
6. Legal staff' or
7. Other insurer employees that perform similar duties.

Very few people employed by an insurer or its agents are not included in this list.

The Regulations also require that the admitted insurer maintain "[R]ecords of the anti-fraud training provided to all staff [and that it] shall be prepared at the time training is provided and be maintained and available for inspection by the Department on request. The training records shall include the title and date of the anti-fraud training course, name and title and contact information of the instructor(s), description of the course content, length of the training course, and the name and job title(s) of participating personnel."

ClaimSchool at <http://www.claimschool.com> has available computer based training programs that should qualify for the training required by the Regulations.

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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.

CAIIA Newsletter

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■ **PRESIDENT'S MESSAGE**

Ed Eames is President of a local service organization that I belong to. Recently, I had an occasion to take Ed on some errands after a meeting. Some people perceive Ed to be disabled. You see, Ed is blind. But with his companion, Latrelle, a guide dog, Ed knows no boundaries.

The first stop was to the bank and I simply opened the door and directed Ed to the teller. You see, the bank was being remodeled and it was not the same as the last time Ed had walked in. We then went to the Post Office. Ed got into line and moved forward until the clerk called him forward.

The last errand was interesting. We went to a local drug store to pick up a prescription. The young clerk found the prescription and looked at me, then asked me if I would like to sign Ed's name. I looked at Ed and asked him, "Are you old enough to sign your name?" Ed laughed. You see, he is in his early seventies. With that, he pulled a plastic card out of his wallet and in the center of the card was a cut out. He asked the young clerk to place the card over the signing area and with that, he signed his name.

I am relating this story only because, it seems, we deal with "disabilities" every day. These are the insureds or claimants that have had a claim and are totally unfamiliar with the process of the adjustment. They are "guided" through the process with all questions being answered and a logical conclusion being reached.



The adjuster, a true professional, works much like Ed's dog, Latrelle. In properly bringing a claim to conclusion, the adjuster exhibits his or her years of experience.

The CCNC to be held September 21 – 22, at the Hyatt Regency Hotel in Sacramento, allows the adjuster to expand their knowledge base, in order to serve the insured in a yet better manner. Please look elsewhere in this Status Report for information. If you have not signed up, please do so now.

Also, with this edition of the Status Report is information regarding our convention to be held in October also in Sacramento.

See you at the CCNC.

Have fun doing your job!

STEVE WAKEFIELD

President - CAIIA 2005-2006

■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Coverage - Contribution

Employers Ins. Co. of Wausau v. Travelers Indemnity Co.

Court of Appeal, First District - June 16, 2006

The principle that an insurer who has defended an action may pursue a non-defending insurer for contribution is well established. This case concerns whether such an action can be brought where the insured has released the non-defending insurer.

The insurers to this action sequentially insured a succession of companies that had allegedly released hazardous contaminants from a manufacturing plant. In 1997 and 1998, the insured settled with a number of insurers, including the defendants to this action, to resolve disputed coverage claims as part of the litigation known as the "Jensen-Kelly" action. The settlement included a release from defense or indemnification of any past, present, or future environmental actions, and an indemnification agreement by the insured to the carriers against any claims under their policies, including claims for contribution.

The present action was triggered by two additional cases filed against the insured for different plaintiffs for bodily injury and property damage due to environmental contamination. Wausau defended and indemnified. It then filed an action against the insurers who had previously settled the "Jensen-Kelly" action in order to obtain contribution. The trial court found that Wausau was entitled to contribution despite the settlement. An appeal was filed.

The Court of Appeal affirmed. The Court rejected the notion that an insurer could avoid contribution to other insurers by settling with the policyholder. This is because contribution rights are based on equitable principles, which exist independent of the rights of the insured. This duty to share in the cost of defense and indemnification does not depend on whether the prior actions were settled or not. This is because the rights are grounded in equity, not contract. Further, since there was no evidence that the settlements exhausted coverage, there was no bar to seeking contribution.

The Court also refused to give the settling insurers an offset for the amount that they had paid. There was no showing that anything paid to settle the prior action had any effect on the amount owing under the current action.

As to the amount of liability, the Court agreed with the trial court that defense costs should be apportioned based on the "time on the risk" approach. The Court concluded that the trial court's method of allocation was within its broad discretion. The judgment was therefore affirmed.

COMMENT

In trying to analyze ways in which the settling insurers could

have been protected against future contribution actions, the Court hints at various ways, including exhaustion of policies, rescission of policies, or perhaps, a buy-back of coverage. However, the Court indicated that the actual effect of the agreements will be looked at, rather than their characterization, as exhausting, rescinding, or cancelling the policy.

Coverage – Pollution Exclusion – Dirt and Rock

Ortega Rock Quarry v. Golden Eagle Insurance Corp.

Court of Appeal, Fourth District, July 27, 2006

The application of the pollution exclusion after recent Supreme Court cases leaves open for interpretation the meaning of the word "pollution". This case applies it to dirt and gravel.

Ortega Rock Quarry operated a rock quarry business. A creek ran through the quarry land that Ortega leased. After heavy storms, the creek overflowed and washed out an access road on the leased property. To maintain access to the quarry, Ortega placed fill dirt from the quarry along the road.

The Environmental Protection Agency ("EPA") issued an administrative order to Ortega, alleging that the fill resulted in an unauthorized discharge of fill material into the creek. It issued an administrative order demanding that Ortega placed into the creek were pollutants within the meaning of the Clean Water Act. Ortega assisted in the development of a restoration plan. The EPA directed Ortega to implement it. In addition, the lessor of the land filed a civil lawsuit against Ortega, alleging that Ortega had damaged its property.

Golden Eagle Insurance Company ("GEIC") issued a general commercial liability policy and an excess policy to Ortega. Ortega was also insured under a general commercial liability policy issued by Continental Casualty Company. Ortega tendered to its insurers, and the insurers denied defense and indemnity. Ortega sued for breach of contract and other claims. The trial court granted summary judgment and summary adjudication in favor of the insurers. Ortega appealed.

The Court of Appeal affirmed. First, following established law, the Court held the insurers had no duty to defend the EPA proceedings because they were not "suits" within the meaning of the policies. The duty to defend and indemnify applies to lawsuits filed against an insured, not administrative proceedings.

As to the action filed by the lessor, as well as the EPA proceeding, the Court held the total pollution exclusion in the policies applied. The Court noted the Clean Water Act defined pollutants as "dredged spoil, solid waste, . . . sludge . . .". The court held that State and Federal environmental laws provide insight into the scope of the definition of pollution, even though not specifically incorporated in those policies. The Court noted that

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■ Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

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natural dirt and rocks are pollutants within the meaning of the Clean Water Act when placed in waters of the United States in violation of that Act.

Ortega argued that, since the policy defined "pollutants", only those irritants or contaminants listed in the policy were excluded. The court rejected that contention, and held that the items listed in the exclusion were not intended to be exclusive, and did not limit the items included within its scope. The Court concluded that the exclusion was not ambiguous and applied to the natural dirt and rocks, which were defined as pollutants under the Clean Water Act. The Court therefore concluded that it properly applied to Ortega's activities. The judgment was therefore affirmed.

COMMENT

This opinion should be read for its discussion of the pollution exclusion, as well as the application in this case. Its holding that the exclusion is not limited to the defined pollutants set forth in the policy will also be of great import.

Duty of Care - Assumption of Risk – Golf

Johnny Shin v. Jack Ahn

Court of Appeal, Second District - July 21, 2006

Cases involving the application of the primary assumption of the risk doctrine in a sports setting continue to struggle with its application. This case involves the application of the doctrine to an injury suffered by a golfer who was struck by a golf ball.

Johnny Shin and Jack Ahn were playing golf. As they finished one hole, Ahn walked to the next tee. Shin lagged back and then began to walk towards the tee box as Ahn got ready to tee off. He stopped at a spot 25 - 35 feet away and at a 40° - 45° angle ahead and to the left of Ahn. Ahn, concentrating on his shot, never knew where Shin was. After he struck his ball, he looked up and saw Shin on the ground where he had been hit in the head.

Shin sued Ahn, and Ahn answered and asserted assumption of the risk. Ahn moved for summary judgment. The trial court initially granted the motion. Shin moved for a new trial. The court changed its mind, and granted a new trial. Ahn appealed.

In a hotly contested 2-1 decision, the trial court granting of the new trial was upheld. Primary assumption of the risk acts as a complete bar to recovery where someone is injured by an inherently dangerous activity. The doctrine does not apply to conduct that is reckless or is so totally outside the range of ordinary activity involved in a sport. This doctrine clearly applies to the sport of golf. One of the inherent risks of golf is being hit by an errant shot. Here, however, the court refused to apply the primary assumption of the risk doctrine.

The court felt Ahn, who was in the same group as Shin, increased the risks of the sport by failing to determine Shin's whereabouts at the time he teed off. A golfer who tees off without ascertaining the location of individuals in his own group increases the risks beyond that inherent in the sport. The court felt that Ahn should have followed the Rules of Golf published by the United States Golf Association, which instructs that, before striking a ball, a player should ensure that no one is in danger of being hit by the ball. Here, Ahn did not comply with this rule. Thus being hit by a golf shot in this case was not an inherent part of the sport, and involved an increase in golf's inherent risks.

Imposing such a duty on a golfer did not destroy or alter the basic nature of the sport. Therefore, the trial court correctly reversed its granting of the summary judgment.

The court did, however, hold that the doctrine of secondary assumption of the risk applied. Shin's location within range of a potential tee shot raised issues of comparative fault.

The dissent argued the primary assumption of the risk doctrine should bar one golfer's suit against another golfer after the former was hit by a ball. The dissent felt Ahn's conduct was, at most, careless or negligent, and was not outside the range of ordinary activity involved in golf. Quoting W.C. Fields, the dissent stated Shin's duty was to "[s]tand clear and keep [his] eye on the ball." Having placed himself in danger, Shin should not be able to argue that Ahn increased the inherent risk of the game. The dissent therefore would have reversed the granting of the new trial.

COMMENT

This case illustrates the problem in most of these cases, namely, where the line is drawn between activities ordinarily incident to a sport and activities that increase the danger inherent in the sport. Because the rules are difficult to apply, continued appeals in this area can be expected.

■ CAIIA Calendar

■ Claims Conference of Northern California

September 21-22, 2006

Contact F. Michael Sowerwine at
(510) 740-0377

■ CAIIA Annual Convention

October 11-13, 2006

Sheraton Grand Hotel, Sacramento

Contact Sharon Glenn at 925-277-9320

2006 CCNC REGISTRATION FORM
Aim High: Taking You to a New Level

Attendee Name: _____
Company: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____
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: Thursday or Friday

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
Or call (916) 361-6616

We are pleased to announce that credit card registration is now available through PayPal



For credit card registration, go to <http://www/claimsconference.org>

Three Suspects Arrested on Grand Theft, Conspiracy Charges After Probe of Case Involving \$595,000 in Bogus Claims Submitted to Automobile Club of Southern California

*Two of the suspects, a former AAA claims adjuster and his acquaintance,
are to be arraigned today at the Riverside Superior Court*

LOS ANGELES – Insurance Commissioner John Garamendi announced that two of three suspects allegedly involved in a conspiracy and grand theft case from the Automobile Club of Southern California (AAA) are scheduled to be arraigned today on 62 felony counts. The California Department of Insurance (CDI) assisted in the arrests of the three suspects along with the Riverside County District Attorney's Office.

Drake Reed, 32, of Highland, and two of his acquaintances, Jerry Schatz, 45, of Moreno Valley, and Joshua Belville, 30, of Highland, were charged with the felony counts of grand theft and conspiracy to commit a crime after their arrests on July 26. Reed and Schatz were booked into the Robert Presley Detention Center, where they remain in custody. Bail for Reed is set at \$208,000; bail for Schatz is \$322,000. Both suspects are scheduled to be arraigned today at 1:30 p.m. in Department 61 of the Riverside Superior Court. Belville surrendered to authorities and was released on \$32,000 bail. He is scheduled to appear in court on August 22.

The case began on April 19 when the Riverside County D.A.'s Bureau of Investigations was contacted by the Special Investigations Unit of AAA regarding a case of internal theft allegedly committed by a claims adjuster. The AAA alleged that Reed, a former claims adjuster with the company, was suspected of participating in a conspiracy with Belville and Schatz. The trio allegedly filed false claims on their own policies as well as fake claims on 33 auto and homeowners policies totaling more than \$595,000.

"All of us pay a penalty for insurance fraud because the costs are passed along to policyholders," said Insurance Commissioner John Garamendi. "These arrests send a loud and clear message to insurance scam artists – you will be caught and prosecuted." Riverside District Attorney Grover Trask concurred with Commissioner Garamendi's statement.

The three individuals allegedly submitted inflated claims for items such as home repairs, vehicle burglary and personal property theft. Reed also allegedly issued checks on closed claims using his manager's computer password to authorize the checks and then deposited the funds into fictitious business accounts allegedly created by Schatz.

According to investigators, Reed netted \$208,085, Schatz received \$322,440, and Belville acquired \$32,985 in fraudulent proceeds from the inflated claims.

On July 25, investigators from the Riverside County D.A.'s Office and the CDI's Fraud Division served search warrants at the homes of the men. Items seized included: financial information such as tax returns, bank statements and computers. Investigators found boats, recreational vehicles, motorcycles and classics cars at the residences.

If convicted, Reed could face 43 years in state prison; Schatz, 33 years; and Belville ten.

Insurance Commissioner John Garamendi Announces Arrest of San Jose Resident for Auto Insurance Fraud

Uninsured San Jose woman rear-ends another vehicle; allegedly renews her auto insurance policy and states the collision occurred after her new policy went into effect.

SAN FRANCISCO – Insurance Commissioner John Garamendi on Wednesday announced the arrest of a San Jose woman for insurance fraud after she allegedly falsified information while submitting a claim to an insurance company.

Suzanne Aguilar, 34, of San Jose, was arrested July 13 at her home for automobile insurance fraud. According to investigators from the California Department of Insurance's Fraud Division, on July 25, 2005, Aguilar was involved in a car accident causing a total loss to her vehicle and damages to the vehicle she rear-ended. Her insurance policy through Infinity Insurance Company had been cancelled on June 18, 2005 for non-payment.

However, on July 30, 2005, she renewed her auto insurance policy after making payment. Then she allegedly filed an insurance claim on August 2, 2005 for the auto collision that occurred on July 25, 2005, stating that it took place the day of her claim.

Aguilar was charged with one felony count of filing a fraudulent insurance claim. She was booked into the Santa Clara County Jail with bail set at \$25,000. The Santa Clara County District Attorney's office is prosecuting the case.



CAIIA REGISTRATION FORM

California Association of Independent Insurance Adjusters
60th ANNUAL CONVENTION — October 11, 12, & 13, 2006

SHERATON GRAND SACRAMENTO

1230 J Street, Sacramento California, 95814
(800) 325-3535 Mention CAIIA for special rates shown below
Standard Room Rate \$149, Suite \$249 plus taxes
Rooms available on first come basis

Attendees must make their own hotel reservations. Hotel Cut-off Date is Friday, September 15, 2006

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 | \$ 245.00 | _____ | \$ _____ |
| Registration Package — members w/o spouse | \$ 195.00 | _____ | \$ _____ |
| President s Dinner/Reception/Awards/Installations | \$ 60.00 | _____ | \$ _____ |
| Education Seminar including lunch (available to member employees or insurance company guests only)* | \$ 25.00 | _____ | \$ _____ |
| Fair Claims Settlement Practices Regulations Recertification | \$ 10.00 | Grand Total | \$ _____ |

☞ Items with ** for Members/Member Employees/Significant others only ☞

SCHEDULED EVENTS

Please Show # Attending Events Below: You Mate Guest*

| | | | | | |
|-------|------------|---|-----|-----|-----|
| 10/11 | 6:30 P.M. | Registration/Reception ** | [] | [] | [] |
| 10/12 | 9:00 A.M. | Business Meeting ** | [] | [] | [] |
| 10/12 | 12:00 P.M. | Lunch ** | [] | [] | [] |
| 10/12 | 1:30 P.M. | Advisory Counsel ** | [] | [] | [] |
| 10/12 | 6:30 P.M. | Presidents Gala Dinner Event, Awards, & Officer Installations | [] | [] | [] |
| 10/13 | 8:00 A.M. | Registration/Continental Breakfast | [] | [] | [] |
| 10/13 | 9:00 A.M. | Education Seminars | [] | [] | [] |
| 10/13 | 12:00 P.M. | Luncheon | [] | [] | [] |
| 10/13 | 1:30 P.M. | Fair Claims Recertification Conclusion | [] | [] | [] |

Any Questions, please call or email Sharon Glenn,
(925) 277-9320, sglenn@johnglennadjusters.com

Please make your checks payable to CAIIA or pay by credit card.

Mail Registration form and payment to:

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sglenn@johnglennadjusters.com

Credit Card: AMEX _____ VISA _____ M/C _____

Cardholder Name _____

Card # _____

Expiration Date: _____

Signature: _____

* 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.

Cut-off date is September 15, 2006. Any registration after that date is subject to a \$35.00 late fee.

■ News of Members

John Glenn Adjusters is pleased to announce that they have moved their headquarters to better facilities located at 2440 Camino Ramon, #295, San Ramon, CA 94583. You can reach them by phone at (925) 277-9320 or by fax at (925) 277-1742. They have also relocated the San Jose office to a bigger site located at 2312-A Walsh Avenue, Santa Clara, CA 95051. You can reach them by phone at (408) 970-0747 or (408) 970-0755.

Most people don't know that back in 1912, Hellman's mayonnaise was manufactured in England. In fact, the Titanic was carrying 12,000 jars of the condiment scheduled for delivery in Vera Cruz, Mexico, which was to be the next port of call for the great ship after its stop in New York.

This would have been the largest single shipment of mayonnaise ever delivered to Mexico. But as we know, the great ship did not make it to New York. The ship hit an iceberg and sank, and the cargo was forever lost.

The people of Mexico, who were crazy about mayonnaise, and were eagerly awaiting its delivery, were disconsolate at the loss. Their anguish was so great, that they declared a National Day of Mourning, which they still observe to this day.

The National Day of Mourning occurs each year on May 5th and is known, of course as *Sinko de Mayo*.

You are on a horse, galloping at a constant speed

On your right side is a sharp drop off, and on your left side is an elephant traveling at the same speed as you.

Directly in front of you is a galloping kangaroo and your horse is unable to overtake it.

Behind you is a lion running at the same speed as you and the Kangaroo.

Question:

What must you do to safely get out of this highly dangerous situation?

If you do not know the answer, quit drinking and get off the damn merry-go-round!