

Department of Insurance Curriculum Board

By Helene DalCin - DalCin Claims Consulting

Continuing Education for Independent Insurance Adjusters

On July 15, 2010, I attended a meeting of the Curriculum Board in Sacramento. The following information is of particular relevance to independent insurance adjusters:

The Assembly Bill 2782 (by the Assembly Insurance Committee) as written purports to remedy several licensing-related issues in the California Insurance Code. One significant clarification pertains to the continuing education ethics requirement for independent insurance adjusters.

Current law specifies 24 hours of continued education, which must include ethics training, is required as a condition of license renewal for independent insurance adjusters. However, the number of hours of ethics training is not specified. Absent a specific amount of hours, the DOI permitted us to default to a minimum of one hour to satisfy this requirement, but this does not comply with the National Association of Insurance Commissioner's (NAIC) guidelines for insurance adjusters. Subsections of SB 2782 specify that the 24 hour CE requirement is to include three hours in ethics training. Several months ago I advised in the Status Report that this change was headed our way, and it is certain to be signed into law well before our next relicensing cycle on May 31, 2012. So please keep this in mind as you seek out an ethics course to fulfill the 2012 relicensing requirement.

I was asked by the DOI management staff that facilitates the Curriculum Board if I thought it was advisable to form a committee to expand and further define the specified areas of acceptable topics for ethics courses for independent insurance adjusters. I declined that offer stating my belief that the existing categories are sufficiently broad to allow us to develop courses that fit within the existing parameters.

On that topic, after January 1, 2011, any newly licensed independent insurance adjuster will relicense two years from the last day of the month on which he or she was initially licensed. It will still be a two year relicensing cycle, but this new regulation allows for the staggering of license renewals so the DOI is not inundated with renewal requests on May 31st of even years.

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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

CAIIA Office
P.O. Box 168
Burbank, CA 91503-0168
Web site - <http://www.caiia.org>
Email: info@caiiia.org
Tel: (818) 953-9200
(818) 953-9316 FAX

Editor: Sterrett Harper
Harper Claims Service, Inc.
Tel: (818) 953-9200

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**California Association
of Independent
Insurance Adjusters, Inc**

PRESIDENT'S OFFICE

17316 Edwards Road, Suite 100
Cerritos, CA 90703
562-802-7822
Email: info@caiaa.org
www.caiaa.org

PRESIDENT

Sam Hooper
hooper@hooperandassociates.com

IMMEDIATE PAST PRESIDENT

Pete Vaughan
pvaughan@pacbell.net

PRESIDENT ELECT

Phil Barrett
barrettclaims@sbcglobal.net

VICE PRESIDENT

Jeff Caulkins
jeff.c@johnsrickerby.com

SECRETARY TREASURER

William "Bill" McKenzie
walshadj@sbcglobal.net

ONE YEAR DIRECTORS

Kearson Strong
kearson@claimsconsultantsgroup.com

Rick Kern
rkern@sgdinc.com

Rick Beers
NCI63@sbcglobal.net

TWO YEAR DIRECTORS

Tanya Gonder
Tanya@casualtyclaimsconsultants.com

Sterrett Harper
harperclaims.com

Art Stromer
artstromer@hotmail.com

OF COUNSEL

Nancy DePasquale
WILLIS & DePASQUALE, LLP
725 W. Town & Country Rd., Ste. 550
Orange, CA 92868
714-544-6000 • Fax 714-544-6202
ndepasquale@wdlegal.net

PRESIDENT'S MESSAGE

MORE THAN GOLF

By the time this message is published, I hope our members have rallied to the support of Phil Barrett in his effort to sign up a sufficient number of golfers to keep the Annual Golf Tournament on schedule for October 21 of this year.

In August, Phil commented "...The golf tournament has become an important part of our budget and the modest proceeds it generates secures its future...CAIIA commits a lot of expense to this event on faith that its worthy members will step up and make it a successful go..."

CAIIA's emphasis on providing insurance claims education as the premier independent adjusters association in the State of California, is enhanced because of the relationships our members have developed with insurance companies, self-insured entities, governmental entities and array of vendors and providers who mutually benefit from educational offerings we provide.

Since our annual golf tournament began over three years ago, we have recognized it has given CAIIA members, clients and their business associates the benefit of meeting each other in an informal environment. Those who have attended in the past commented on what a great time they had. And more importantly it allowed the attendees the chance to become better acquainted to those who share business relationships. As Phil pointed out, the tournaments have been a financial success. But more importantly, it has improved communications within the insurance community. I have personally received many emails, brochures and other communications from individuals I met at the convention and/or golf tournament.

The last three tournaments have been



very successful. With available positions of 144 golfers, as of August 13, 2010, Phil reports we had only 21 players signed up. Understanding not all of us play golf; we all have the opportunity of inviting clients and/or your other business associates to play. We can accomplish this by sponsoring a hole or individual players.

We should also keep in mind the golf tournament is not just a single standalone event. The tournament precedes our Annual Convention (October 22, 2010). The next day convention offers the educational program for which CAIIA is known.

This is more than golf. The tournament culminates a period of the year at which time our leadership changes; our members, clients, sponsors and guests have the opportunity to meet in each other in a fantastic environment.

We look forward to the conventions and golf tournaments as successful, and more, as they have been in the past.

SAM HOOPER

President - CAIIA 2009-2010

Recoverable Medical Expenses: Competing Concerns Of The Collateral Source Rule and Tort Principles Of Damages Recovery

Willis/Depasquale LLP by Scott Blackstone

Following the decision by the Court of Appeals, Fourth District, in *Howell v. Hamilton Meats & Provisions, Inc.* (2009) 179 Cal.App.4th 686, currently on review by the Supreme Court, the Court of Appeal, Third District, recently decided the case of *Carol Willmatt v. King* 2010 WL 3096258 in which the Court held that the collateral source rule precludes reduction of medical expenses based on amounts paid by insurance except in limited circumstances codified by statute involving medical malpractice claims and claims involving government defendants. The Court further stated that any attempt to further limit application of the collateral source rule should be accomplished through legislative reform.

In *Carol Willmatt*, supra, the court emphasized the policy underlying the collateral source rule that a defendant should not be permitted to avoid payment of full compensation for injury inflicted merely because the victim had the foresight to obtain insurance, citing to *Helfend v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal. 3d. 1, 6. The court noted that its earlier decision in *Hanif v. Housing Authority* (1988) 200 Cal.App. 3d 635, 639-670, that recoverable medical expenses should be reduced to amounts paid by Medi-Cal, was distinguishable because the *Hanif* decision concerned only Medi-Cal payments and the Court in *Hanif*, supra, did not address the issue of payments by private medical insurance. The court also distinguished the holding in *Nishihama v. City and County of San Francisco* (2001) 93 Cal.App.4th 298, noting that the court in *Nishihama* addressed the issue of whether plaintiff would be obligated to pay a medical center's lien in light of the health care provider's acceptance of payment of medical bills by the private insurer and the court did not address whether the payments made by private insurance created an exception to the collateral source rule.

In a dissenting opinion, Justice Hull stated that awarding damages for an amount the injured party was not required to pay would be inconsistent with California Civil Code Sections 3333 and 3282 which provide that the measure of damages in a tort action is the amount of damages reasonably required to compensate for the harm suffered, including the reasonable cost of medical care. Justice Hull noted that in other jurisdictions, the reasonable value of medical services has been determined to be the amount actually paid, regardless of whether the payment is made by private insurance or a government program.

The competing policy interests between the collateral source rule and the established principles of tort law regarding the reasonable amount of compensable damages should soon be resolved by the California Supreme Court's decision in *Howell v. Hamilton Meats*, supra. However, regardless of whether the collateral source rule applies, counsel should be permitted to argue that only reasonable medical charges, as established by the medical professionals testifying, may be compensated, regardless of the amounts billed for health care services.

Insurance Law News

Submitted by Smith, Smith & Feeley, LLP - Irvine, CA

Insured's Alleged Negligent Supervision Of Employee Is Not An "Occurrence"

An insured's alleged negligence in supervising an employee does not constitute an "occurrence," or "accident," within the meaning of a general liability policy. (*L.A. Checker Cab Cooperative, Inc. v. First Specialty Ins. Co.*(2010) 2010 WL 235430)

Facts

L.A. Checker Cab Cooperative, Inc. (Checker), a taxi cab company, employed Alexander Terminassian (Terminassian) as a cab driver. Terminassian was operating his taxi one evening when he got into a dispute with a would-be passenger, Marco Cifuentes (Cifuentes). In the course of the dispute, Terminassian, allegedly acting in "self-defense," shot Cifuentes.

Cifuentes later filed a personal injury action against Checker, alleging that Checker had negligently supervised Terminassian. Checker tendered defense of the action to its liability insurer, First Specialty Insurance Company. First Specialty declined to defend Checker.

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Insurance Law News

Submitted by Smith, Smith & Feeley, LLP - Irvine, CA

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Checker later sued First Specialty for breach of contract and bad faith, alleging that First Specialty had wrongfully refused to defend Checker in the underlying personal injury lawsuit filed by Cifuentes. The trial court entered summary judgment in favor of First Specialty. Checker appealed.

Holding

The Court of Appeal affirmed, holding that First Specialty had no duty to defend Checker in the underlying personal injury lawsuit filed by Cifuentes. According to the appellate court, Checker's alleged negligent supervision of its employee, Terminassian, did not constitute an "occurrence," or "accident," within the meaning of the First Specialty policy. The court reasoned that the term "occurrence," or "accident," refers to "the event causing damage, not the earlier event creating the potential for future injury...." Thus, "Checker's alleged negligence in not adequately supervising Terminassian was not the direct cause of Cifuentes's injury but, if anything, only a remote antecedent cause which does not qualify as an 'occurrence' under the policy." Since Checker's alleged liability did not arise from an "occurrence," First Specialty had no duty to defend Checker.

Comment

Courts applying California law have split on the issue of whether an insured's negligent supervision of another constitutes an "occurrence" within the meaning of a liability policy. The state appellate court in this case, along with the federal district courts in *American Empire Surplus Lines Ins. Co. v. Bay Area Cab Lease* (N.D. Cal. 1991) 756 F.Supp. 1287 and *Farmer v. Allstate Ins. Co.* (C.D. Cal. 2004) 311 F.Supp. 884, have held that negligent supervision is not an occurrence. In contrast, the federal district courts in *Keating v. National Union Fire Ins. Co.* (C.D. Cal. 1990) 754 F.Supp. 1431, *Westfield Ins. Co. v. TWT, Inc.* (N.D. Cal. 1994) 723 F.Supp. 492 and *Fireman's Fund Ins. Co. v. National Bank for Cooperatives* (N.D. Cal. 1994) 849 F.Supp. 1347 all held that negligent supervision can be regarded as an occurrence. (Oddly, the state appellate court in the present case did not mention any of the prior cases dealing with the issue.)

In any event, given the existing split in case authority, one can expect further litigation on the issue of whether negligent supervision is an occurrence within the meaning of a liability policy.

Commissioner Poizner Announces San Jose Man Arrested, Charged with Filing Six False Auto Insurance Claims for Existing Damage to His Vehicles

Insurance Commissioner Poizner today announced the arrest of Mohammad Shablid, 48, of San Jose, for allegedly filing falsely six separate insurance claims for preexisting damage to his vehicles.

"When you lie to your insurance company, you commit insurance fraud," said Commissioner Poizner. "Committing insurance fraud is never worth the legal trouble, fines and possible jail time you will face."

He was arrested on June 28 and booked at the Santa Clara County Jail. He was booked on a \$30,000 felony warrant. If convicted, each felony charge has a potential 5 year maximum sentence with a \$10,000 potential maximum fine.

From December 2008 through January 2009, Shablid allegedly made six different automobile insurance claims with five different insurance companies for two of his automobiles. In five of the claims, Shablid said he was the victim of a hit and run accident. According to investigators, all of the damage he claimed occurred was damage that had already existed on his vehicles, or damage that he had previously been compensated for.

In his sixth and last claim, Shablid said that he was driving and struck his apartment building in the parking structure. In that claim, he included pre-existing damage, for which he had already been compensated. In many instances, Shablid would cancel his insurance policy upon a claim being paid and then open a new policy with a different insurance company. The insurance companies involved included Allstate, 21st Century, AIG (now 21st Century), Esurance, and Travelers Insurance.

Shablid allegedly made material misrepresentations to investigators from five different insurance companies.

The case is being prosecuted by the Santa Clara County District Attorney's Office.



**CALIFORNIA ASSOCIATION OF INDEPENDENT INSURANCE ADJUSTERS
2010 MEMBER OF THE YEAR
NOMINATION FORM**

This award is given to the CAIIA member who, in the opinion of the membership, has performed outstanding service to the organization. This award is to be presented at the Fall Convention Gala Installation Dinner. We are now soliciting nominations for this award. Please use the form below to nominate a member whom you feel is deserving of this award. **Return the completed form to the CAIIA Immediate Past President, Pete Vaughan, RPA NO LATER THAN September 30, 2010 by fax or e-mail.** Thank you for your participation.

Nomination Criteria:

- Attendance at CAIIA Functions
- Participation on Committees
- Volunteering to organize events
- Putting their interest on par with the interest of the organization and it's members
- Encouraging other licensees to join CAIIA

I nominate:

Name: _____

Company _____

Address _____

Telephone _____

Examples of Achievements

Nominator: _____ Telephone: _____

E-Mail or Fax Form by September 30, 2010 to:

Pete Vaughan, RPA

E-mail: pvaughan@pacbell.net

Fax: 707-747-0889



CAIIA REGISTRATION FORM
California Association of Independent Insurance Adjusters
ANNUAL CONVENTION & GOLF TOURNAMENT –October 21 & 22, 2010



Double Tree Hotel
One DoubleTree Drive
Rohnert Park, CA 94928

Mention California Association of Independent Insurance Adjusters or reference the reservation code "CAI" for special room rates of \$120/Nt. Plus tax. Attendees must make their own hotel reservation.

Your Name _____ Spouse/Guest _____
 Company _____
 Address _____
 Phone _____ Fax _____
 E-Mail _____

EVENT	COST	#TICKETS	Total Price
Member Convention Package (Includes Golf Dinner, complete convention schedule)	\$ 175.00	_____	\$ _____
Non-Member (**) Convention Package (Includes Breakfast, CE Class/ lunch/dinner)	\$ 190.00	_____	\$ _____
Spouse/guest fee (***) Name _____	\$ 100.00	_____	\$ _____
4 Hour CE Class (Includes breakfast, presentation, lunch)	\$100.00	_____	\$ _____
President's Gala Dinner/Reception	\$ 75.00	_____	\$ _____
Grand Total Payable			\$ _____

SCHEDULED EVENTS

Please specify which events you and/or your spouse/guest will by placing a check mark in the box next to the event. Complete a separate form for each registrant and additional guest.

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

	<u>You</u>	<u>Spouse/Guest</u>
10/21 - 10A.M. Golf Tournament (Registration Forms at www.caiiagolftournament.com)		
10/21 - 6:00 P.M. Golf Dinner (Foxtail Golf Club)	<input type="checkbox"/>	<input type="checkbox"/>
10/22 - 7:00 A.M. Registration/Breakfast	<input type="checkbox"/>	<input type="checkbox"/>
10/22 - 8:00 A.M. Seminar	<input type="checkbox"/>	<input type="checkbox"/>
10/22 - 12:00 P.M. Lunch	<input type="checkbox"/>	<input type="checkbox"/>
10/22 - 1:30 P.M. Business Meeting (*)	<input type="checkbox"/>	<input type="checkbox"/>
10/22 - 10:00 AM Spouse/Guest. Lunch (***)	<input type="checkbox"/>	<input type="checkbox"/>
10/22 - 6:30 P.M. Reception/Cocktail Hour	<input type="checkbox"/>	<input type="checkbox"/>
10/22 - 7:30 P.M. President's Inaugural Dinner	<input type="checkbox"/>	<input type="checkbox"/>

Barrett Claims Service
P.O. Box 282
Ukiah, CA 95482
barrettclaims@sbcglobal.net
707-462-5647
 FAX 707-467-1578

(*) **Members only**

Credit Card:	AME <input type="radio"/> VISA <input type="radio"/> M/C <input type="radio"/>	3 Digit Security #	
Cardholder:		Signature:	
Card No.		Expiration Date:	
Card Address (City/State/Zip)			

(**) 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.

(***) Spouse/guest fee includes alternative activity, lunch and dinner on Friday. For details on spouse activity: www.flyinghorse.com

Early registration is encouraged. Cut-off date for contracted room rate is September 20, 2010.



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- Medical Records and Malingering: You Can't Always Get What You Want
 - Technology in Collision Reconstruction
- Electronic Discovery - Privilege Issues, Work Product
- Ethics and the Adjuster - A Crime Scene Investigation
 - Slip, Trip & Fall
- The Mortgage Crisis and It's Impact On Property Claims
 - Motor Cargo Theft
- What You Should Know About Detecting and Fighting Fraudulent Claims

Thank you to our
2010 CCNC
GRAND SPONSOR



Early-Bird Registration Now Open

www.ClaimsConference.org

CAIIA's 4th Golf Tournament

October 21, 2010 (Rohnert Park, CA)

We wish to recognize the following firms who have already registered to sponsor this splendid event:

Tee Sponsors (8 spots left)

All County Environmental & Restoration
Alliance Environmental (Longest Drive)
Belfor
American Geotechnical
PW Stephens Environmental, Inc.
The Restoration Cleanup Company, Inc.
FRSTeam by Custom Commercial
Willis DePasquale, LLP (Closest to the Pin)
PT&C Forensic Consulting Services
Cleanrite-Buildrite

Dinner Sponsors (Sold Out)

Haag Engineering
Heritage Companies, Ron Oates

Beverage Cart Sponsors (Sold Out)

Continental Interpreting Services
Able Restoration, Inc.

Putting Contest (Sold)

Tucknott Electric Co.

Secure your sponsorship or place on the player roster while you can! Visit www.caiiagolftournament.com for details and registration forms. Call Phil Barrett @ (707) 462-5647 with any questions.

HELL

The following is an actual question given on a University of Arizona chemistry mid term, and an actual answer turned in by a student. The answer by this student was so 'profound' that the professor shared it with colleagues, via the internet, which is, of course, why we now have the pleasure of enjoying it as well.

Bonus Question: Is Hell exothermic (gives off heat) or endothermic (absorbs heat)?

Most of the students wrote proofs of their beliefs using Boyle's Law (gas cools when it expands and heats when it is compressed) or some variant.

One Student, however, wrote the following:

First, we need to know how the mass of Hell is changing in time. So we need to know the rate at which souls are moving into Hell and the rate at which they are leaving, which is unlikely. I think that we can safely assume that once a soul gets to Hell, it will not leave. Therefore, no souls are leaving. As for how many souls are entering Hell, let's look at the different religions that exist in the world today.

Most of these religions state that if you are not a member of their religion, you will go to Hell. Since there is more than one of these religions and since people do not belong to more than one religion, we can project that all souls go to Hell. With birth and death rates as they are, we can expect the number of souls in Hell to increase exponentially. Now, we look at the rate of change of the volume in Hell because Boyle's Law states that in order for the temperature and pressure in Hell to stay the same the volume of Hell has to expand proportionately as souls are added.

This gives two possibilities:

1. If Hell is expanding at a slower rate than the rate at which souls enter Hell, then the temperature and pressure in Hell will increase until all Hell breaks loose.

2. If Hell is expanding at a rate faster than the increase of souls in Hell, then the temperature and pressure will drop until Hell freezes over.

So which is it?

If we accept the postulate given to me by Teresa during my Freshman year that, "It will be a cold day in Hell before I sleep with you", and take into account the fact that I slept with her last night, then number two must be true, and thus I am sure that Hell is exothermic and has already frozen over. The corollary of this theory is that since Hell has frozen over, it follows that it is not accepting any more souls and is therefore, extinct . . . leaving only Heaven, thereby proving the existence of a divine being which explains why, last night, Teresa kept shouting, "Oh my God".

THIS STUDENT RECEIVED AN A+.