



Reasonable Value of Medical Services

Credit: Willis/ DePasquale, Orange, CA

Children's Hospital Central California v. Blue Cross of California, California Court of Appeal, Fifth District, No. F065603, June 10, 2014.

Children's Hospital Central California (Children's) provided medical services to children. Children's and Blue Cross of California had a written contract setting rates for in-patient and out-patient services to MediCal beneficiaries. During a period of time that the contract was not in effect, Children's was required to provide emergency services to Blue Cross beneficiaries under federal and state law. Blue Cross later paid Children's \$4.2 million for services provided during the off contract period. Children's filed suit against Blue Cross, seeking additional payments, claiming that the amount paid was not reasonable. The Court of Appeal, Fifth District, noted that the burden is on the person claiming the reasonable value of services to show the value of the services rendered. The value of the services has been described as the "going rate" for the services or the reasonable market value at the current market prices; a price that a willing buyer would pay to a willing seller. The court discussed in detail a number of factors to consider in assessing reasonable value of medical services. Evidence of value can be shown through agreements to pay a particular price and the agreement can be admissible at trial for purposes of showing the reasonable value. Evidence of a professional's customary charges and earnings may be admissible to demonstrate the value of the services rendered. The fees charged by medical providers and the fees usually charged in the general geographical area are also factors to consider regarding reasonable value. The court stated that a medical care provider's billed prices for services is not necessarily representative of either the cost of providing those services or their market value, citing to the California Supreme Court holding in *Howell v. Hamilton*

Meets and Provisions, Inc. (2011) 52 Cal.4th 541, 564). The scope of the rates accepted by or paid to the health provider by other payers is an indicator of the value of the service in the market place. The Court of Appeal also noted that the scope of permissible discovery is very broad relating to obtaining information to evaluate the reasonable value of services rendered, citing to the recently depublished case of *Dodd v. Cruz* (2014) 223 Cal.App.4th 933, 939.

POINT TO CONSIDER:

This ruling is important for setting forth factors to consider in conducting discovery and in presenting argument at trial regarding the reasonable value of services rendered. This case also supports a party's ability to obtain information from health care providers in attempting to determine reasonable value of services rendered and can be used with the same effect as the depublished *Dodd v. Cruz* case when arguing regarding the reasonable value of services.

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President's Message

Summer vacation has ended. Time to refocus and get settled in after what I hope was a fun-filled and relaxing three months.

The CAIIA has been busy attending & planning conventions, recruiting new members and preparing for the upcoming year.

We are pleased to welcome new member Peter W. Kofoed of Peter Kofoed Group (PKG). Peter has already jumped in and agreed to sit on the Board. With that in mind we are pleased to announce the 2014-2015 Board Nominees. Please see page 3 for the full list of nominees for the upcoming year.



Tanya Gonder
CAIIA President

We are excited about the new nominees and look forward to a productive 2015.

We attended the 21st annual CCNC held at the Hyatt Regency in downtown Sacramento. It was a well-attended affair. Our booth was in a prime location. President-elect Kim Hickey suggested we have music and a "multi-colored disco ball" next year! We just want to make sure no one keeps walking when they see us! The venue was great and the food delicious!

Many thanks to those members who volunteered their time to staff our booth and greet visitors.

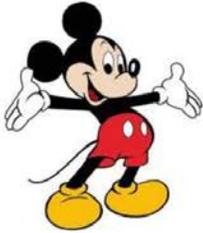
The CAIIA's Fall Convention will be held at the Disneyland Hotel on October 9th & 10th. Please see page 7 for the "official flyer". Please reserve your room now. Plan to get CE credits and network. Sources tell me we know how to throw a party!

Happy Labor Day!!

Tanya Gonder
2013/2014 CAIIA President



News of and from our Members...



Hey there, hi there, ho there!
 Don't whistle while you work...
 ...take a break and join us!

This year's CAIIA Annual Convention is being held at the Disneyland Hotel in Anaheim, CA.

We will be starting the convention at 6:30 pm on Thursday, October 9. Things will wrap up Friday night after the President's Inaugural Dinner Dance.

Come early or stay after and enjoy the Disneyland Resort with your family. Fun, fun, fun! You can go to Disneyland, California Adventure, or Downtown Disney. There is so much to do there, you don't even need to leave the resort.

Hotel room reservations at the Disneyland Hotel should be made immediately...and no later than September 9th at our group rate of \$199. We have 40 rooms blocked so don't wait and be sad...be happy...do it now. The attached CAIIA Reservation form has everything you need to get started.

On Friday, we will be voting on our new slate of officers and directors, providing you an opportunity to get 3 hours of CE, mingle with your friends in the industry and, did I say, have FUN? Of course, insurance company personnel are welcome at our Annual Convention. Don't you want them to have FUN, too? So call them before someone else does.

Those flying in can choose the following airports: John Wayne (SNA) (the closest), Los Angeles International (LAX), Burbank (BUR) or Ontario (ONT).

See you in October...in beautiful Orange County.

Kimberley Hickey
 CAIIA President-Elect
 SGD, Inc.
khickey@sgdinc.com



2014/ 2015 CAIIA Board of Director Nominees:

Director

1. LeeAnne Junge – Thornhill & Associates, Inc.
2. Peter Kofoed - PKG – Peter Kofoed Group
3. Greig Merritt – American Claim Experts

Secretary

Steve Weitzner – Buxbaum Loggia and Associates, Inc.

Vice President

Steve Washington – Washington & Finnegan, Inc.

CCNC Volunteers

A big thank you to the men and women who volunteered to help out with the CAIIA's booth at the CCNC.

Tanya Gonder

Steve Einhaus

Greg Merritt

Kim Hickey

Pete Vaughan

Phil Barrett

Paul Camacho

Sterrett Harper

GONE GREEN...

The environmental revolution has progressed from a contemplative noun to an action verb. Individuals, businesses, and schools are all evolving into entities that are beautiful, brilliant shades of green. In a sense, we are all adjusters as we make changes in our daily lives.

And our daily lives are becoming more vital, with innovative changes in transportation and energy, and wiser, ethical choices in the food we eat and the items we buy.



As we look ahead to the not so distant future, we see:

- Cars, trucks and all means of transportation giving way to electric and fuel cell vehicles, and gas stations increasingly becoming energy stations. Other manufacturers are speeding alongside Hyundai, which released the first zero emission hydrogen car in Summer 2014. In fact, Toyota's 2014 advertisement for its hydrogen/fuel cell vehicle, "We're setting the next 100 years in motion" is already a reality.
- Being carbon neutral is also a reality as we emphatically say NO to coal and oil, and realize the best place for these pollutants is in the ground. Phrases like "carbon sequestering" and "carbon offsets" will not only be understood, but also required.
- Carbon offset credits are increasingly available for purchase by businesses and individuals to offset vehicle and other emissions with the aim of going carbon neutral.
- Home and business electrical use is now mainly derived from renewable and solar panels abound.
- Thriving restaurants that are serving only locally grown food, more farmers markets, and more people eating seasonally from their own garden or community garden.
- California, along with Oregon, Washington and the Northeast states leading the way, with the "Great Turning" flowing in from each coast.

So we leave this column with two questions. First, will what might seem like a loss of comfort in our lifestyle actually be a meaningful, satisfying gain? And second, will we be the change we wish to see in the world?

And the answers will be yes, if we keep working together toward keeping our cool planet cool for the grandchildren and all the coming generations.

All comments and ideas welcome at SteveEinhaus@gmail.com and #415-238-87867.

COURT IMPROPERLY EXCLUDED REPORTS DETERMINING WHETHER A WAREHOUSE FLOODING CAUSED DAMAGES.

Credit to Willis/ DePasquale; Orange, CA

Pyramid Technologies, Inc. v. Hartford Casualty Company,

U.S. Court of Appeal, Ninth Circuit, No. 11-56304, May 19, 2014.

Pyramid Technology, Inc. was insured under a policy of insurance with the Hartford Casualty Insurance Company, which included coverage for a building or business personal property replacement costs. In 2005, Pyramid's warehouse was flooded. The flood water did not reach the shelves where Pyramid's inventory items were located, but Pyramid was concerned that the humidity level in the warehouse had damaged its inventory. Tests revealed corrosion damage to some of Pyramid's items and the parties contested whether the flood caused that damage. Hartford claimed that the corrosion damage pre-dated the flood and denied coverage. Pyramid filed suit against the Hartford offering multiple expert reports and the testimony of one of its expert witnesses as evidence. The District Court excluded Pyramid's expert reports and granted Summary Judgment to Hartford. The Ninth Circuit Court of Appeal reversed, holding that Federal Rules of Evidence Section 702 provides that an expert's opinion is admissible if the witness is sufficiently qualified and the witness' specialized knowledge will help a trier of fact resolve a contested issue.

POINTS TO CONSIDER:

Always consider regarding admissibility of expert reports whether the expert has satisfied the requirements for testimony to be admissible.

Continued from page 6

The Court also addressed public policy considerations, noting that admission of evidence that Colonies subsequently hired a security service, which improved safety, would discourage others similarly situated from undertaking such measures, an outcome that would thwart public policy. Even though some exceptions to the rule of exclusion have been carved out, "courts and legislatures have frequently retained the exclusionary rule in negligence cases as a matter of 'public policy,' reasoning that the exclusion of such evidence may be necessary to avoid deterring individuals from making improvements or repairs after an accident has occurred." The Court affirmed the judgment of the trial court.

COMMENT

This decision reaffirms the general rule of § 1151, and it emphasizes the importance of Legislative intent to interpret critical terms such as "negligence." The Court focused on public policy considerations when the issue of subsequent remedial measures impacts public safety. Yet it also recognized that exceptions to § 1151 continue to apply where evidence is admissible for another purpose [besides negligence], such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

*Evidence Code § 1151 Exclusion of Previous Remedial Measures to Prove Negligence**Credit to Low, Ball & Lynch, San Francisco, CA**Carl McIntyre, et al. v. The Colonies-Pacific, LLC*

Court of Appeal, Fourth Appellate District (July 31, 2014)

California Evidence Code § 1151 excludes evidence at trial of a defendant's subsequent remedial measures to prove "negligence or culpable conduct." In this case, the issue was whether the trial court abused its discretion in excluding evidence under § 1151.

Plaintiff Carl McIntyre ("McIntyre") owned a jewelry store called My Jeweler, located in the Colonies Crossroads shopping center. The shopping center was owned by The Colonies-Pacific, LLC ("Colonies"). In January 2006, two stores in the shopping center were robbed at gunpoint. McIntyre expressed concern about the lack of security to Colonies' property management company, and he was told that security was not budgeted and that Colonies could not charge tenants for security without the approval of two anchor tenants. One of the anchor tenants also sent a letter to Colonies asking what it planned to do about security. The robberies were reported to Colonies, but Colonies decided not to provide security or seek the anchor tenants' approval of an expense for security. Instead, Colonies asked the local police department to "step up the patrol through the center" because it believed the police were more capable than the private security force.

On August 16, 2006, My Jeweler was robbed. The robbers shattered the glass display cases, pistol-whipped Mr. McIntyre and stole jewelry, cash and digital security equipment. After this robbery, Colonies hired a security service to provide an unarmed guard to patrol the common areas of the shopping center. McIntyre sued Colonies for negligence and premises liability. At trial, Colonies brought a motion in limine under Evidence Code § 1151 to exclude evidence of subsequent remedial measures. McIntyre argued that § 1151 was inapplicable because he did not intend to use the evidence to show Colonies was negligent, but rather to show that the lack of a security patrol was the cause of the robbery. The court granted Colonies' motion, and the jury returned a special verdict finding that Colonies was negligent, but that its conduct was not a substantial factor in causing McIntyre's damages.

McIntyre appealed on the basis that the trial court's evidentiary ruling was an abuse of discretion. He asserted that the term "negligence" in the statute refers exclusively to the breach of duty issue, and evidence of subsequent remedial measures is admissible to show the issue of causation. Colonies countered that the term "negligence" necessarily includes each element of a negligence cause of action, including causation.

The Court of Appeal acknowledged that the term "negligence" in §1151 is not defined, and because it is reasonably susceptible to both parties' interpretations, the Court analyzed the legislative history of §1151, and also the seminal case of *Helling v. Schindler* (1904) 145 Cal. 303 (*Helling*). In *Helling*, the plaintiff's hand was badly cut by the knives of a buzz-planer that he was using in the course of his employment. He alleged the accident was caused by dull planer knives and a loose belt on the machine. The plaintiff obtained a judgment and the defendant employer appealed, contending that the trial court erred by admitting evidence that after the accident, the planer knives were sharpened and the belt was tightened. The Supreme Court reversed the judgment, concluding the evidence was inadmissible to prove negligence, including the disputed element of causation.

McIntyre did not cite *Helling*. Instead he relied on *Dow v. Sunset Telephone and Telegraph Company* (1910) 157 Cal. 182 (*Dow*). In *Dow*, the plaintiff was injured while working on a phone line. Over a defense objection, a defense witness testified that after the accident he found electrical wires that were in contact with each other (which caused the wire the plaintiff was working on to be supercharged) and he removed one of the wires. The Supreme Court held the evidence was admissible "not of subsequent repairs, but of a condition shown to have existed before the accident, and continuing after the accident, and tending to establish the cause of the accident by further showing that when the condition was changed the trouble was removed."

The McIntyre Court believed that the *Dow* exception to the rule of inadmissibility was not helpful because the conditions at the shopping center when the jewelry store was robbed were undisputed. Thus, evidence that Colonies hired a security service after the robbery was unnecessary to show there was no security service prior to the robbery. The Court found the McIntyre's case akin to *Helling*, since the purpose of the subsequent remedial measures evidence was to show there was a "negligent condition" of the shopping center that caused the armed robbery.

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CAIIA REGISTRATION FORM
California Association of Independent Insurance Adjusters
ANNUAL FALL CONVENTION & DANCE – October 9 & 10, 2014

Disneyland Hotel
 1150 W. Magic Way, Anaheim, CA 92802
 Phone: (714) 520-5005



Reservations must be made by Tuesday, September 09, 2014 or before the group rate of \$199.00 (plus parking and other fees) rooms are sold out, so do not delay. Prevailing rates may apply after this date or when the group rooms are sold out, whichever occurs first. Rooms are subject to availability.

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

EVENT	COST	#TICKETS	TOTAL PRICE
MEMBER CONVENTION Package (*) (Includes reception, breakfast, CE Class/lunch/dinner)	\$150.00	# _____	\$ _____
Non-Member (**) Convention Package (Includes reception, breakfast, CE Class/lunch/dinner)	\$175.00	# _____	\$ _____
Spouse/Guest fee (***) Name _____	\$100.00	# _____	\$ _____
3 Hour CE Class (Includes, breakfast, presentation, lunch)	\$100.00	# _____	\$ _____
President's Gala Dinner/Reception	\$100.00	# _____	\$ _____
Grand Total payable			\$ _____

SCHEDULED EVENTS

Please specify which events you and/or your spouse/guest will attend 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:

	You	Spouse/Guest
10/09 – 6:30 P.M. Reception, Disneyland Hotel	[]	[]
10/10 – 8:00 A.M. Registration/Breakfast	[]	[]
10/10 – 9:00 A.M. Seminar	[]	[]
10/10 – 12:00 P.M. Lunch	[]	[]
10/10 – 1:30 P.M. Business Meeting	[]	[]
10/10 – 6:30 P.M. Reception/cocktail Hour	[]	[]
10/10 – 7:30 P.M. President's Inaugural Dinner Dance	[]	[]

Kimberley Hickey
 SGD, Inc.
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(*) Members only.
 (**) 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, breakfast and dinner on Friday.

Patriot Day (Sept 11) History

Patriot Day is a day the US remembers the terrorist attacks on September 11, 2001. This day is commonly referred to as "9-11" ("Nine-Eleven"). It is believed that 2,977 people died in the attacks. President George W. Bush proclaimed September 11th Patriot Day in 2002.

Facts about Patriot Day (Sept 11)

- On September 11th, US Flags should be flown at half mast - both on US soil and abroad.
- A moment of silence is held at 8:46 a.m. (EST) across the nation - commemorating the time the first plane struck the North Tower of the World Trade Center on September 11, 2001.
- The National September 11 Memorial and Museum takes up over half of the destroyed World Trade Center site. It contains bronze parapets inscribed with the names of those killed on September 11, 2001 and those killed in the 1993 World Trade Center attack.
- Cleaning up Ground Zero, as the World Trade Center was renamed, took 18 months and 19 days, and was completed in May of 2002.

The Twin Towers of the World Trade Center were once the tallest buildings in the world, and contained enough concrete to build a sidewalk from New York City to Washington D.C.

Patriot Day (Sept 11) Things to Do

- Visit the National September 11 Memorial and Museum in New York City.
- Observe a moment of silence.
- Attend a 9/11 Memorial Service.
- Share with a group of children your memories of 9/11 and how the events of the day forever changed America.
- Show support for local police and firemen as a way to honor the emergency personnel who gave their lives on 9/11.

