



# Status Report

**OCTOBER 2003**

## California Association of Independent Insurance Adjusters, and the Western Region of the National Association of Independent Insurance Adjusters

### All Industry Day Seminar Low, Ball & Lynch Legal Liability Update

**Date:** October 10, 2003  
**Time:** 8:00 a.m. - Registration/Continental Breakfast  
9:00 a.m.-12:00 noon – Seminar  
12:00 noon – Lunch & Lunch Discussion\*  
**Location:** Embassy Suites, Old Sacramento  
100 Capitol Mall  
Sacramento, CA 95814  
(916) 326-5000

As part of the CAIIA's commitment to continuing education, we are pleased to announce this year's All Industry Day Seminar. Please join us for the very popular Low, Ball & Lynch Legal Liability Update. For over 50 years Low, Ball & Lynch has been handling civil litigation throughout Northern and Central California; presently, the firm has 31 lawyers, with offices in San Francisco, Burlingame, and Monterey, and represents clients in virtually all of California's 58 counties. The firm is a recognized industry leader in keeping clients abreast of legal developments in California through its Weekly Law Resume publication, and seminars throughout the state.

Raymond Coates and Jonathan Margolis will present their Insurance Coverage Update and Update on California Law, with discussions of cases of interest to both property and casualty adjusters.

In addition to the Legal Liability Update Seminar, our attorney speakers will present a luncheon discussion on the statute of limitations in California, and other relevant issues.

Please join us! RPA CE credits have been approved. The application is located elsewhere in this issue. Sign up today.

PUBLISHED MONTHLY BY  
**California Association of Independent Insurance Adjusters**



*An Employer Organization of Independent Insurance Adjusters*

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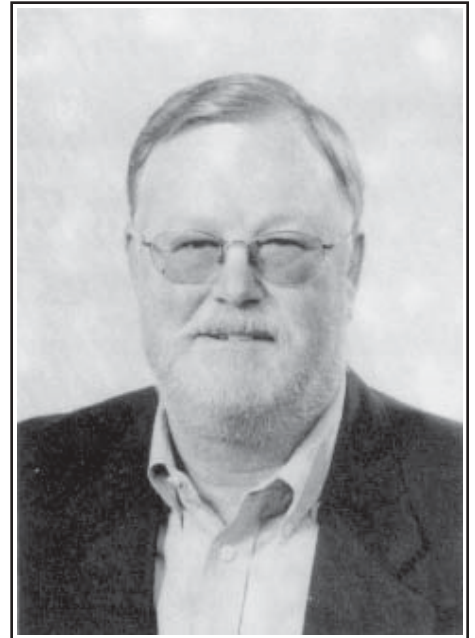
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■ **PRESIDENT'S MESSAGE**

Old Man Time is still marching on. This will be my last message to you. Lee Collins will be stepping in this month as your new president. I know that he will have many ideas and thoughts about where our association can and will go in the future. Lee has been instrumental in so many areas of the CAIIA including our revamped directory, education chairman and in charge of putting together this year's conference and All Industry Day seminar. My sincere thanks go to Lee. Our new CAIIA Exhibit Booth was proudly displayed at last month's Combined Claims Conference of Northern California held at the Radisson Hotel in Sacramento. Doug Jackson did an outstanding job of designing and commissioning our new Exhibit Booth. I have heard nothing but praise from everyone who has seen it. Talking about the CCNC, my thanks to all of our CAIIA members who participated in manning the booth. Sam Hooper could not make the trip so he asked his brother, Tom Hooper to participate. Tom manned the booth for both days. Pete Vaughn, Sterrett Harper and Lee Collins also put time in as well. This was the largest turn out for the CCNC for many years. We met many insurance company personnel and distributed many directories and other CAIIA material. My thanks to Pete, Tom, Sterrett and Lee for their efforts at the conference and all of the many CAIIA members who were present at the Conference. Our conference will be here shortly, October 8, 9, and 10<sup>th</sup>. Interest in the conference seems keen and we hope for a large turnout to not only our



own business meeting but also the All Industry Days seminar on Friday, October 10<sup>th</sup>. Please read the article about the conference in this Status Report for more information.

I can't express how proud I am to have been elected your president. The people that I have met and worked with over the past four years on the Executive Board and the two additional years on the Board of Directors has renewed my view of our industry and the professionalism our members display everyday. I look forward to continue working with the board this coming year in my new capacity as Immediate Past President. The CAIIA is a strong and vibrant professional group. We are a significant part of and a contributor to the ever-changing insurance claims industry here in California. I hope to continue to be a part of it.

**STEVE TILGHMAN, RPA**  
*President - CAIIA 2002-2003*

# An Assembly of Experts

By Garrett Engineers, Long Beach, CA

Our expert was assigned to inspect a pickup truck that suffered an engine fire while pulling a trailer. The owner/driver, reported that he saw a light-colored smoke in his rear view mirror and started to pull off the road to the right-hand shoulder. When he stopped the vehicle and looked under the right front fender he saw the roadside grass on fire. The owner also reported that the vehicle did not have a history of oil leaks of any kind, that he kept the vehicle serviced on a regular basis and that the transmission had been recently serviced (including filter and fluid replacement). He also reported that the trailer was not loaded to full capacity and that he was not exceeding the speed limit at the time of the fire.

Our expert examined the vehicle and its burn patterns. The fire damage was most intense at the level of the transmission dipstick and faded as it went forward and up the engine block. The damage indicated that the origin of the fire was transmission fluid that overflowed the dipstick tube and was ignited by the catalytic converter in the exhaust system directly below the dipstick tube. Confirmation of the transmission overflow was gained by viewing the underside of the vehicle. The transmission housing was coated with an oily fluid. There were no oil stains on the oil sump or the exhaust crossover pipe, indicating that the coating did not come from the front of the vehicle and was not engine oil. The transmission fluid coating appeared fresh and had no evidence of collected road dust or debris, confirming that the leak was recent and supporting the driver's "no history of oil leaks" statement.

Transmission fluid expands as it is heated. There is a significant difference between the volume occupied by cold transmission fluid versus normal operating temperature transmission fluid. This is why transmissions (among other things) should never be overfilled. When they are overfilled cold, and then run to normal operating temperatures, the fluid expands and can run out the filler tube or dipstick tube. In this case it dripped down onto the very hot catalytic converter, and then caught fire. The pickup truck's recent transmission service was the most likely cause of the overfilling of the transmission, which caused the fire.

## ■ CAIA Calendar

### ■ CAIA Annual Conference

October 8-10, 2003 - EMBASSY SUITES, Sacramento, CA

Contact: Steve Tilghman, 916-563-1900

### ■ Combined Claims Conference (CCC)

March 23-24, 2004 - Pacific Palms Conference Center, Industry Hills, CA

Contact: Brenda Reisinger, 888-811-6933

### ■ CAIA Midterm Meeting

Wednesday, March 24, 2004 to Thursday, March 25, 2004

The Marriott Newport Beach and Tennis Club, Newport Beach, CA

Contact: Lee Collins, 916-783-0100

# ■ HRB Insurance Law Update

*Submitted by Hancock, Rothert & Bunshoft, LLP*

*Mackinnon v. Truck Insurance Exchange*, California Supreme Court, Case No. S104543, Filed August 14, 2003

The California Supreme Court held that a CGL policy's pollution exclusion did not apply to personal injury claims arising from the use of insecticide at an apartment building.

This case arose when a tenant in the insured's apartment building died after her apartment was sprayed with an insecticide by a pest control company. The tenant's parents filed a wrongful death lawsuit against the insured alleging that the insured negligently failed to inform the tenant that her apartment was to be sprayed with dangerous chemicals. The insured tendered the claim to its insurer, Truck Insurance Exchange. Truck denied the claim based on the pollution exclusion in the policy, which provided: "We do not cover Bodily Injury or Property Damage Resulting from the actual, alleged, or threatened discharge, dispersal, or release

or escape of pollutants . . . at or from the insured location." The terms "Pollution or Pollutants" were defined as "meaning any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include materials which are intended to be or have been recycled, reconditioned or reclaimed." The trial court and the Court of Appeal agreed with Truck's position and found that the pollution exclusion at issue precluded coverage for the wrongful death suit. The California Supreme Court reversed.

The California Supreme Court concluded that the "normal application of pesticides around an apartment building in order to kill yellow jackets would not comport with the common understanding of the work 'pollute'." Thus, because "the pollution exclusion in question does not plainly and clearly exclude ordinary acts of negligence involving toxic chemicals such as pesticides", it was not "conspicuous, plain and clear" and would not be enforced.

## California Man Arrested on three Felony Counts of Fraud

*July 22, 2003*

A Carmichael, California man was arrested on three felony counts of insurance fraud.

Jason C. Turner, 34, was arraigned and booked into the Placer County Jail on June 12. If convicted, he could face up to five years in prison and/or a maximum fine of \$50,000. The Placer County District Attorney's Office is prosecuting the case.

In March 2001, Turner reportedly claimed he was the victim of a shooting while at the Dillman Shooting Range in Lincoln, and that the unidentified shooter stole two of his gun. Turner filed a claim with State Farm Insurance for the alleged theft and was paid \$3,557.

In October 2002, the case was referred to CDI's Fraud Division and investigators questioned Turner as a suspect. He reportedly confessed that he staged the robbery and shot himself.

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## 2003 Darwin Award Winner

When his 30-caliber revolver failed to fire at his intended victim during holdup in Long Beach, CA, would-be robber James Elliot did something that can only inspire wonder. He peered down the barrel and tried the trigger again. This time it worked . . . .

### And now, the Honorable Mentions . . .

The chef at a hotel in Switzerland lost a finger in a meat-cutting machine, and, after a little hopping around submitted a claim to his insurance company. The company, suspecting negligence, sent out one of its men to have a look for himself. He tried the machine and lost a finger. The chef's claim was approved.

A man who shoveled snow for an hour to clear a space for his car during a blizzard in Chicago returned with his vehicle to find a woman had taken the space. Understandably, he shot her.

After stopping for drinks at an illegal bar, a Zimbabwean bus driver found that the 20 mental patients he was supposed to be transporting from Harare to Beltway had escaped. Not wanting to admit his incompetence, the driver went to a nearby bus stop and offered everyone waiting a free ride. He then delivered the passengers to the mental hospital, telling the staff that the patients were very excitable and prone to bizarre fantasies. The deception wasn't discovered for 3 days.

An American teenager was in the hospital recovering from serious head wounds from an oncoming train. When asked how he received the injuries, the lad told police that he was simply trying to see how close he could get his head to a moving train before he was hit.

A man walked into a Louisiana Circle-K, put a \$20.00 bill on the counter, and asked for change. When the clerk opened the cash drawer, the man pulled a gun and asked for all the cash in the register, which the clerk promptly provided. The man took the cash from the clerk and fled, leaving the \$20.00 bill on the counter. The total amount of cash he got from the drawer - \$15.00. (If someone points a gun at you and gives you money, is a crime committed?)

A thief burst into a Florida bank one day wearing a ski mask and carrying a gun. Aiming his gun at the guard, the thief yelled, 'FREEZE, MOTHER-STICKERS, THIS A \*\*\*\*-UP!' For a moment, everyone was silent. Then the snickers started. The security guard completely lost it and doubled over laughing. It probably saved his life, because he'd been about to draw his gun. He couldn't have drawn and fired before the thief got him. The thief ran away and is still at large. In memory of the event, the baker later put a plaque on the wall engraved with the words, "Freeze, mother-stickers, this is a \*\*\*\*-up!"

Seems an Arkansas guy wanted some beer pretty badly. He decided that he'd just throw a cinderblock through a liquor store window, grab some booze, and run. So he lifted the cinderblock and heaved it over his head at the window. The cinderblock bounced back and hit the would-be thief on the head, knocking him unconscious. The liquor store window was made of Plexiglas. The whole event was caught on videotape.

As a female shopper exited a New York convenience store, a man grabbed her purse and ran. The clerk called 9-1-1 immediately, and the woman was able to give them a detailed description of the snatcher. Within minutes, the police apprehended the snatcher. They put him in the car and drove back to the store. The thief was taken out of the car and told to stand there for a positive I.D., to which he replied, "Yes, Officer, that's her. That's the lady I stole the purse from."

The Ann Arbor News crime column reported that a man walked into a Burger King in Ypsilanti, Michigan, at 5 a.m., flashed a gun, and demanded cash. The clerk turned him down because he said he couldn't open the cash register without a food order. When the man ordered onion rings, the clerk said they weren't available for breakfast. The man, frustrated, walked away.



# New Case Involving Additional Insured Endorsements – General Contractor-Subcontractor

*Submitted by Bradley & Gmelich, Glendale, California*

The California Court of Appeal recently decided the case of *Vitton Construction Co., Inc. vs. Pacific Insurance Co.*, (2003) 2003 Cal.App. LEXIS 1097, which addresses the coverage obligations of subcontractor's insurance company under the terms and conditions of a "Blanket Additional Insured" as it relates to a construction site accident.

In *Vitton*, an employee of Pacific Erectors, Inc. (PEI), a roofing subcontractor was injured when he fell through an uncovered hole in a roof during the construction of a warehouse. Vitton was the general contractor and hired the subcontractor. Vitton and the roofing subcontractor entered into a written agreement for, among other things, the "[c]utting and installation of roof opening frames." The subcontract required PEI to carry general liability insurance "covering all operations by or on behalf of [PEI] . . . and including coverage for: (1) premises and operations; (2) products and completed operations; (3) contractual liability . . . ; (4) broad form property damage (including completed operations); (5) explosion, collapse and underground hazards; and (6) personal injury liability." The subcontractor further required that the general liability policy obtained by PEI name Vitton and the project owner as additional insureds.

The policy included a "Blanket Additional Insured" endorsement, which defined as an additional insured any person or organization PEI was contractually obligated to add as an additional insured, provided that such a party would only be considered an additional insured "with respect to liability arising out of . . . '[y]our work' for that additional insured by or for you."

PEI actually created the hole in the roof into which the plaintiff fell and injured himself. The injured employee filed a claim for worker's compensation with PEI's worker's compensation carrier and then filed a lawsuit against Vitton on the theory that Vitton was negligent for failing to cover the hole. Vitton (through its primary and excess carriers) settled the case with the injured employee for \$6 million and then filed a lawsuit against Pacific (PEI's carrier) seeking equitable indemnity, subrogation, contribution and declaratory relief on the ground that Vitton was an additional insured entitled to coverage under the umbrella policy Pacific issued to PEI. Pacific filed a summary judgment on the grounds that Vitton was not an additional insured covered by the policy because Vitton's liability for the Anderson accident did not "arise out of" work performed by PEI. The trial court granted summary judgment in favor of Pacific and Vitton and its carriers appealed.

During the appeal, PEI argued that it was not negligent and the Vitton, as the general contractor, was responsible for safety on the jobsite. However, in reversing the trial court's grant of summary judgment, the Court of Appeals held that "the fact that an accident is not attributable to the named insured's negligence is irrelevant when the additional insured endorsement does not purport to allocate or restrict coverage according to fault." (*Id.*) Furthermore, the Court of Appeals stated that "when an insurer chooses not to use such clearly limited language in an additional insured clause, but instead grants coverage for liability 'arising out of' the named insured's work, the additional insured is covered without regard to whether injury was caused by the named insured or the additional insured." (*Id.*) Finally, the court determined that because PEI created the hole, there was a sufficient "minimal causal connection" between the subcontractor's work and the situation giving rise to liability to trigger coverage for the contractor as an additional insured. (*Id.*)

Based on this case, carriers must now carefully examine the language of any additional insured endorsement issued to a general contractor by a subcontractor's carrier and the specific facts of a construction site accident to determine if there is a "minimum causal connection" between the accident and the work performed by the subcontractor so as to trigger an obligation to defend and indemnify the general contractor.



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**Attendees must make their own hotel reservations. Hotel Cut-off Date is September 17, 2003**

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- Association members must purchase a complete registration package.
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- 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. Complete a separate form for employees/guests.

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	COST	# of TICKETS	TOTAL
Registration Package – members with spouse/mate **	\$ 195.00	_____	\$ _____
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Education Seminar ONLY*	\$ 20.00	_____	\$ _____

**Grand Total Payable \$ \_\_\_\_\_**

**SCHEDULED EVENTS**

	You	Mate
10/8 – 6:30 P.M.-Registration/Reception	[ ]	[ ]
10/9 – 9:00 A.M. – Advisory Council	[ ]	[ ]
10/9 – 12:00 P.M. – Lunch	[ ]	[ ]
10/9 – 1:30 P.M. – Business Meeting	[ ]	[ ]
10/9 – 6:30 P.M. – Reception/Presidents Dinner	[ ]	[ ]
10/10 – 8:00 A.M. – Registration/ Continental Breakfast	[ ]	[ ]
10/10 – 9:00 A.M. – Education Seminar	[ ]	[ ]
**"Low Ball & Lynch – Legal Liability Update"		
10/10 – 12:00 P.M. – Lunch	[ ]	[ ]

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\* We welcome the attendance and participation of insurance company and risk management claims personnel and Attorneys at the Educational Seminar and Lunch.

\*\* Your Association has drastically reduced the registration this year. Take advantage of these price reductions by attending *your* CAIIA Annual Convention.

**Cut-off date is September 22, 2003. Any registration after that date is subject to a \$35.00 late fee.**

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