CAIIA Status Report

OCTOBER 2007

Doug Jackson named President of RPA

During March 2007 Board of Directors meeting of the Society of Registered Professional Adjusters, past president of the CAIIA, Douglas B. Jackson, RPA of South west Claims Service, Inc. (Simi Valley, CA), was confirmed as the new President of the Society. Mr. Jackson advises that he is extremely proud and honored to accept the position for the organization that the CAIIA spearheaded 10 years ago. Many changes have already been made to improve the Society including streamlining and facilitating easier submission and acceptance of Continuing Education (CE) credits and allowing designees to be able to earn CE's one year forward or one year back. The new Board of Directors is more sensitive to the needs and stresses with which insurance claims professionals are faced and have dedicated the Society to respect and relate to the professionals who lead our claims industry in every aspect of the organization. With a new executive director on staff, Pam Murphy, Mr. Jackson assures that members will appreciate the new look and feel of the organization. He promises to bring the Society up to the level of professionalism of its members and to the level the insurance industry demands. With the new leadership of the RPA, Mr. Jackson requests that each insurance claims professional consider joining the Society and demonstrate to your industry with your RPA designation that you truly are a PROFESSIONAL! According to the Society, the qualification criteria for attaining the RPA Designation are: 1. Meet all requirements for membership listed in the Society's bylaws. 2. Have a minimum of 5 years experience in one of the occupational categories acceptable for membership (i.e. Claims Adjuster, Supervisor/Manager/Educator of Adjusters) and an AIC, CPLU, SCLA, or similar designation; OR have a minimum of 10 years experience in one of the occupational categories acceptable for membership. 3. Pass the RPA Designation Exam. For more information on the RPA, including new easier online CE Submissions and online Membership Renewals, go to www.rpa-adjuster.com. You may also email Mr. Jackson at scsdj@southwestclaims.com.

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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@caiia.org*.

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PRESIDENT'S MESSAGE

I made it. This is my final newsletter and it can't be here quick enough. Don't be alarmed when the next picture you see has facial hair. No, I haven't decided to grow any, at least not that I planned on. I must admit I was getting tired of seeing my face every time I opened the newsletter each month. Do I really look that old? Don't answer that. Peter Schifrin of Schifrin, Gagnon and Dickey, Inc. will be installed as the newest President of the CAIIA at our annual convention this month. Pete Vaughan of Vaughan & Associates will be the President-Elect, Sam Hooper of Hooper & Associates will be the Vice President and the incoming Secretary-Treasurer will be Phil Barrett (Barrett Claims Service). The nominations for the Board of Directors are John Ratto (Reliant Claims Service, Inc.), Kim Hickey (AIMS), Helen Dalcin (DaCin Claims Consulting), Paul Camacho (Mission Adjuster), in addition to Jeff Stone (Stone & Associates) and Bob Fox (Robert Fox Adjusters).

I want to thank everyone for his or her support during my term as President. I have enjoyed working with you and getting to know many of you on a personal basis. Not only have I been impressed by the knowledge and experience that this organization possesses, but it has been without a doubt most helpful and enjoyable to me both professionally and individually. Although we come from around the State and are all involved in our own business, whenever someone needed assistance, clarification, or whatever the request, all one needed to do was to send one email. The number of helpful (and very often funny) responses was immediate. Maybe that stems from the business we are in, but something well worth noting.

As I pass into the ranks of Past President, I will continue to attend the meetings and conferences and support the CAIIA as much as it has supported me. Peter, I will impart my space here to you.

SHARON GLENN
President - CAIIA 2006-2007

The CAIIA Exhibits at the CCNC

The CAIIA again had its booth at the Combined Claims Conference of Northern California. As usual it was wildly successful. There were hundreds of people at the CCNC and many stopped by our booth to pick up our directory and other items we had for them.

The CAIIA wishes to thank all of the following people for helping out at the booth this year: Thad Eaton of Eaton and Johnson, Pleasant Hill, Frank Zeigon of M & Z Claims Service, Yorba Linda, Bob Fox of Robert Fox Adjusters, San Bruno, Sharon Glenn of John Glenn Adjusters, San Ramon, Sam Hooper of Sam Hooper and Associates, Cerritos, Phil Barrett, Barrett Claims Service, Ukiah, Peter Schifrin of SGD, Northridge and Don Ferguson of Hunt & Ferguson, Salinas. Without the help of all of these people, our exhibit would not have been as successful as it was. Thanks to all.

California Sport & Recreation Legal Update

Submitted by Manning & Marder, Kass, Ellrod Ramirez LLP

California Supreme Court Rejects Application of Release to Bar Claim of gross Negligence

Terral Janeway v. City of Santa Barbara, et al. (2007) 41 Cal.4th 747

Written by: Anthony Ellrod

On July 16, 2007 the California Supreme court issued its opinion in Janeway v. City of Santa Barbara, affirming the decision of the Court of Appeals that an exculpatory agreement, to the extent it purports to release liability for future gross negligence, violates public policy and is unenforceable. The Supreme Court did not address the finding of the Court of Appeals that the release was effective to bar plaintiff's claims for ordinary negligence.

This case involved the drowning death of Katie Janeway, a developmentally disabled child, at Adventure Camp, a summer recreational camp for disabled children offered by the City of Santa Barbara. Camp activities included swimming, arts and crafts, group games, sports, and field trips. The application form for Adventure Camp signed by the girl's mother included a release of all claims against the City and its employees from liability, including liability based upon negligence, arising from camp activities.

Based upon Katie's history of seizures, the City took special precautions during the Adventure Camp swimming activities and assigned a counselor to keep Katie under close observation during the camp's swimming sessions. The counselor had worked for one year as a special education aide at the middle school attended by Katie, had observed Katie experience seizures at the school, and had received instruction from the school nurse regarding the handling of those seizures.

The counselor had also attended training sessions conducted by the City concerning how to respond to seizures and other first aid matters.

Prior to going in the pool Katie suffered a mild seizure lasting a few seconds. The counselor observed Katie for approximately 45 minutes afterward, and concluded that it was safe for her to swim. While Katie was swimming and diving off the diving board, the counselor sat on the side of the deep end watching. At one point, Katie dove in the water, surfaced and began swimming to the side. The counselor diverted her eyes from Katie for a period of approximately 15 seconds, at which time Katie disappeared. Two to five minutes later after the pool was evacuated she was found at the bottom of the pool.

Katie's parents sued the City and others for wrongful death. The City brought a motion for summary judgment based upon the waiver and release signed by Katie's mother. The plaintiffs opposed the motion alleging that the City's conduct constituted gross negligence, and arguing that the waiver and release did not bar claims for gross negligence. The trial court granted the motion to the extent that the release applied to plaintiff's claims of ordinary negligence, but denied the motion to the extent that the plaintiff's claims of ordinary negligence, but denied the motion to the extent that the plaintiffs could prove gross negligence. The Court of Appeals affirmed, as did the California Supreme Court in a split decision with two justices dissenting.

Whether a release will bar a claim for gross negligence against a provider of sports or recreational activities has long been the subject of speculation. While no California case until now has directly addressed the issue, most legal scholars and business operators have concluded that an agreement attempting to release claims of gross negligence would be deemed unenforce-

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California Sport & Recreation Legal Update

Submitted by Manning & Marder, Kass, Ellrod Ramirez LLP

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able as a matter of public policy, as is the case in the vast majority of other states. The Supreme Court's decision in Janeway has now confirmed this.

While the Court's ruling is disappointing to the health club industry, it comes as no great surprise. Further, there are elements of the decision that can be viewed as favorable. First, while not expressly doing so, the decision by implication confirms the long line of cases holding that releases in the sports and recreational context do not implicate public interest and are therefore are entirely enforceable as to ordinary negligence.

Second, it addresses one of the greatest concerns in the Janeway opinion issued by the Court of Appeals – the blanket statement; "A determination that gross negligence has occurred is a question of fact." This language could arguable be relied upon by virtually any plaintiff for the proposition that the mere allegation of gross negligence can defeat summary adjudication and force the issue to a jury as "a question of fact." In its opinion, however, the Supreme court addressed this concern stating as follows: "Despite the concerns of defendants and their amici curiao, in light of the experience under these statutes it does not appear that the application of a gross negligence standard, as defined in California, has a tendency to impair the summary judgment process or confuse juries and lead to judgments erroneously imposing liability . . . . In this respect, we emphasize the importance of maintaining a distinction between ordinary and gross negligence, and of granting summary judgment on the basis of that distinction in appropriate circumstances."

What is the implication of the Janeway opinion to the sports and recreational industry? That to some extent remains to be seen. It is clear that releases purporting to bar viable claims of gross negligence will not be enforced. It is not clear the extent to which the courts will hesitate to grant summary adjudication based upon creative allegations of gross negligence. Hopefully, in light of the Supreme Court's admonition above, the lower courts will recognize "the importance of maintaining a distinction between ordinary and gross negligence, and of granting summary judgment on the basis of that distinction in appropriate circumstances."

How to Drive in L.A.

Submitted by Russ Powell

1. You must first learn to pronounce the city's name - it's L.A.

2. The morning rush hour is from 5 a.m. to noon. The evening rush hour is from noon to 7 p.m. Friday's rush hour starts on Thursday morning.

3. The minimum acceptable speed on most freeways is 85 mph. On the 105 or 110, your speed is expected to match the highway number. Anyting less is considered "Wussy".

4. Forget the traffic rules you learned elsewhere. L.A. has its own version of traffic rules. For example, cars/trucks with the loudest muffler go first at a four-way stop; the trucks with the biggest tires go second. Cell phone-talking moms ALWAYS have the right of way.

5. If you actually stop at a yellow light, you will be rear-ended, cussed out, and possibly shot.

6. Never honk at anyone. Ever. Seriously. It's another offense that can get you shot (not by law enforcement).

7. Road construction is permanent and continuous in all of L.A. and Orange counties. Detour barrels are moved around for your entertainment pleasure during the middle of the night to make the next day's driving a bit more exciting.

8. Watch carefully for road hazards such as drunks, skunks, dogs, cats, barrels, cones, celebs, rubber-neckers, shredded tires, cell-phoners, deer and other road kill, and the coyotes feeding on any of these items.

9. Map Quest does not work here - none of the roads are where they say they are or go where they say they do and all the freeway off and on ramps are moved each night.

10. If someone actually has their turn signal on, wave them to the shoulder immediately to let them know it has been "accidentally activated."

11. If you are in the left lane and only driving 70 in a 55-65 mph zone, you are considered a road hazard and will be "flipped off" accordingly. If you return the flip, you will be shot.

12. Do not try to estimate travel time - just leave Monday afternoon for Tuesday appointments, by noon Thursday for Friday and right after church on Sunday for anything on Monday morning.

13. And finally "Why is the L.A. Freeway called the '405'? Because no matter where you are going, it takes 4 or 5 hours to get there.

Weekly Law Resume

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

Torts - Primary Assumption of Risk Doctrine Applies to Golf

Shin v. Ahn, (July 31, 2007)California Supreme Court

In *Knight v. Jewett* (1992) 3 Cal 4th 296, the California Supreme Court established the primary assumption of the risk doctrine, under which those involved in a sporting activity do not have a duty to reduce the risk of harm inherent in the sport itself. In recent years, California courts have expanded the doctrine to include not only co-participants, but coaches and sponsors of sporting events. In this case, the Supreme Court addressed whether the primary assumption of the risk doctrine should apply to "non-contact" sports, such as golf.

Plaintiff Johnny Shin and Defendant Jack Ahn were playing golf with a third person at Rancho Park Golf Course in Los Angeles. Ahn finished playing the 12th hole ahead of his playing partners. He then proceeded to the 13th tee, where he prepared to hit his tee shot. Although the record is somewhat sketchy, Ahn claimed that he looked around for any hazards. He then pulled his tee shot left. Shin, who had taken a different route to the 13th tee, was standing ahead of the tees to the left, checking cell phone messages. Ahn's tee shot struck Shin in the temple, causing serious injury.

Shin sued Ahn for negligence.[3] Ahn filed a motion for summary judgment, relying on the primary assumption of the risk doctrine. The trial court denied the motion. The Second District Court of Appeal affirmed. The Supreme Court granted review and held that the primary assumption of the risk doctrine applies to golf, but affirmed the Court of Appeal decision.

The Court of Appeal concluded that golf is an active sport in which participants risk being struck by an errant ball. However, it did not apply the primary assumption of the risk doctrine, because Plaintiff and Defendant were playing in the same group. The Second District instead applied traditional negligence principles in holding that Ahn breached a general duty of care owed to a member of his own group by failing to ascertain where he was before teeing off.

The Supreme Court rejected the Court of Appeal analysis. The Supreme Court held that a case should not turn on whether a defendant is playing with the plaintiff, or in another group. The question of duty involves the relationship of the parties to the sport. In golf, there is an inherent risk of being struck by a ball flying at high speeds. Holding participants liable for missed shots would only encourage lawsuits and deter players from enjoying the game. The Supreme Court held that golfers have a limited duty of care to other players. This duty is only breached if there is a showing of intentional or reckless activity that increases the risk inherent in the sport. Here, the Court held the record was "too sparse" to support a finding that Ahn did or did not act recklessly. Therefore, the Court affirmed the Court of Appeal decision, denying the motion for summary judgment.

COMMENT

In *Knight*, the California Supreme Court had left open the question whether the primary assumption of the risk doctrine applies to non-contact sports. This case holds that the doctrine applies to golf injuries. This case also affirms the significant non-legal principle of leaving your cell phone in the car while playing golf, and remembering the game's most important word . . . FORE!

Premises Liability – Landlord Duty – Gang Members

Ernest Castaneda. v. George Olsher, (July 30, 2007) California Supreme Court

Does a landlord have a duty to refuse to rent to known gang members or to evict them when they have harassed other tenants? In this case, the California Supreme Court held no such duty existed.George Olsher owned Winterland-Westway Mobile Home Park in El Centro, California. Ernest Castaneda, 17, lived in the mobilehome park. Another space was leased to a Carmen Levario, who did not live there. Her son, Paul Levario lived there. He was identified as a known gang member. Allegedly, another gang member who was visiting Levario fired a shot that injured Castaneda, a bystander. Castaneda was struck when there was a gun battle between Levario's guest and members of another gang. Even though there was evidence that gang members hung out at the mobilehome park, there was no evidence of violence.

Castaneda contended Olsher breached the duty not to rent to known gang members or to evict them from the premises. At the close of Castaneda's case, Olsher moved for nonsuit. The trial court granted the nonsuit. The Court of Appeal reversed and remanded the matter for a new trial. The Supreme Court granted Olsher's petition for review.

The Supreme Court concluded that the trial court correctly granted the nonsuit. The Court first concluded that mobilehome park owners ordinarily have no duty to reject prospective tenants they believe, or have reason to believe, are gang members. To recognize such a duty would tend to encourage arbitrary housing discrimination and would place landlords in the untenable situation of facing potential liability whichever choice they made about a prospective tenant.

Additionally, the Court concluded that there was no duty to undertake proceedings to evict the gang member in the cir-

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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_____

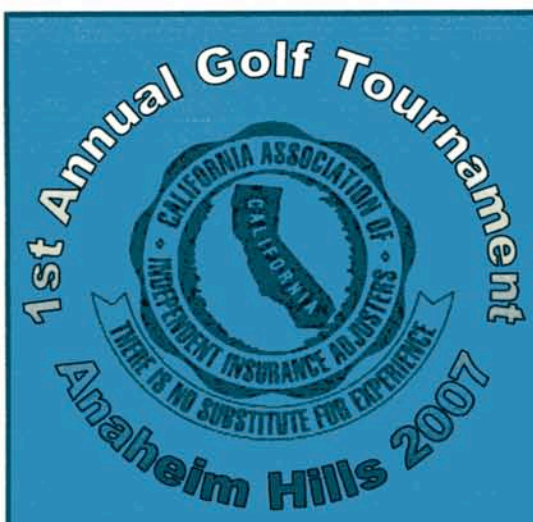
Card # _____

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**



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

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cumstances of this case. The Court stated that a residential tenant's behavior and known criminal associations may, in some circumstances, create such a high level of foreseeable danger to others that the landlord is obliged to take measures to remove the tenant from the premises or bear some portion of the legal responsibility for injuries the tenant subsequently causes. However, in this case there was no evidence that Levario or his guest had used, displayed or possessed a gun at the mobilehome park in the past. There were no prior violent episodes in the park. There was no reason to expect a confrontation at the park. Thus, the shootout was not highly foreseeable and Olsher did not have a duty to prevent it by evicting Levario.

Finally, the Court held Olsher did not have a duty to hire and deploy security guards to prevent gang violence in the mobilehome park or to maintain brighter lights in the common areas. To require guards to be hired required a showing of prior similar incidents on the premises or other sufficiently serious indications of a reasonably foreseeable risk of violent criminal assaults. No such evidence existed in this case. Furthermore, there was no showing that inadequate lighting was a substantial factor in causing the injury. Therefore, the nonsuit was proper.

The Court of Appeal judgment was reversed. A disserting opinion by Justice Kennard felt the jury, not the court, should have determined whether the mobilehome park breached its duty to protect tenants from gang-related criminal conduct.

COMMENT

The imposition of a duty to not rent to known gang members would have imposed onerous duties on landlords. Further in this case, there were no facts to justify the imposition of a duty to evict a tenant.