CAIIA Status Report

NOVEMBER 2004

New Way To Insure Your Errors and Omissions

Claim Professionals Liability Insurance Company, RRG., (CPLIC) is a new way to cover errors and omission as an independent adjuster.

With the working name of CPLIC, the effort started over a year ago by adjusters affiliated with the National Association of Independent Insurance Adjusters. Their charge was to create a regulated means of alternative risk transfer that could be open to all claim professionals for Errors and Omissions and General Liability Insurance coverage. With committees of volunteers from across the nation establishing underwriting guides, claims practices and risk management protocol, the plan was submitted to the State of Vermont in August 2004. Simply stated, this is a member equity insurance company to which all claim professionals may apply for membership. Our policy was written by claim professionals and appears on our web-site at www.cplic.net. Other information covering the formation is also available on the site. If you do not have Internet access you may call 877 572 7542 (877 57C PLIC) where a member services representative is available.

Our Certificate of Authority to operate a liability insurance company was signed by the Commissioner in Vermont on 9-19-04. (That was a Sunday so he must have felt it was a high priority matter.)

After several days of intense debate (negotiations) with the A+ reinsurer (and after months of preliminary work), we received our binder on 9-24-04 which was reviewed and accepted by the Board of Directors.

On September 29,2004, the minimum capital requirements of one million dollars cash was met. All of this money came from adjusters, large and small, representing all but about ten states of the union.

On September 30, 2004 our first binder was issued to a firm in Billings, Montana, whose principal was the chief architect of our manuscript policy. Since then, we have been adding one new insured per day. Our second one was in Pennsylvania and the third in Kentucky followed by the fourth in New York and the fifth in California. We are registered to do business in all 50 states and currently have about 15 more applications going through underwriting.

Of the 128 initial investors, 10 were firms that had their main office in California. From our initial investors, 77 volunteered to work on some committee or complete some part of the overall plan. The number of man-hours put in to this project by all is incalculable. Adjusters, appraisers, investigators, experts and consultants serving the insurance and self-insurance claim industry all came together and gave of their time and expertise to make CPLIC a reality and a benefit to our profession. We expect it to endure the test of time and is open to all claim professionals who have an interest in their future.

Michael Hale
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An Employer Organization of Independent Insurance Adjusters

Inside This Issue

***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.*

CAIIA Newsletter

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■ PRESIDENT'S MESSAGE

Like those that came before me, it is indeed an honor to have been nominated and voted into the office to serve as the 58th President of the CAIIA. I thank you all for your faith and support as I take the reigns of the CAIIA from my friend, Lee Collins of Greg Bragg & Associates, who has always given so much to the CAIIA.

As the 58th President of the CAIIA, I look back at the long list of professionals that came before me. From that growing list, I am pleased to see so many still active in this association, even when they are retired from the business. If I take something from those who held this office before me, mix it with something I have learned from those around me, my job is half done. I have always felt that to honor those who have blazed the trail before you is to give credit to their knowledge and contribution and which has provided you with the gifts you enjoy today. That acknowledgement gives me a theme I will honor during my term…that we move forward from our past successes without reinventing the proverbial wheel at every turn. If this sounds like a history lesson, it should. We learn from our past so that we don't expend unnecessary efforts during our present.

I have asked our membership for their support in the management of the CAIIA. As an all volunteer organization, with the active involvement of each CAIIA member, we can do more and provide a better product for our customers…the insurance companies and risk managers we serve. Each of you who serve the CAIIA will be making a sacrifice that will benefit the entire membership for years to come. There are no better claims professionals than the members of the CAIIA.

Before we move forward into the next term, I want to thank a few persons, and there are so many more, who have contributed so much to the CAIIA and, consequently, myself. Besides Lee Collins, I would like to honor Steve Tilghman of SGD, Peter Schifrin of SGD, Pete Vaughan of Vaughan and Associates, Mike Kielty of George Hills Co., Sharon Glenn of John Glenn Adjusters, Sam Hooper of Hooper and Associates, and Sterrett Harper of Harper Claims Service. They have given to the CAIIA all year long. And I thank Don Ferguson of Hunt & Ferguson, who has been a long-time member and supporter of the CAIIA and a good friend.

Now retired, but still a supporter of the CAIIA membership, Dean Beyer said something to me that rings so true, that "…the CAIIA has acted as a lifeline to firms who may have not had any other voice, or awareness, into the problems concerning our industry." Hopefully, that powerful line gives you the understanding as to why someone is a member of the CAIIA. It is that sense of purpose for the CAIIA as to why our clients will recognize that we are more than insurance adjusters…we are claims professionals who want the best insurance industry possible.

DOUG JACKSON, RPA
President - CAIIA 2004-2005

CWCI: New State Law Mandates Bilingual Fraud Language with TD Checks

September 23, 2004

Last week, Governor Schwarzenegger signed SBX4-2 (Speier), a workers' compensation fraud bill that, among other things, revises the fraud notice that insurers and self-insurers and self-insured employers must include on or with an injured worker's TD check, and requires that the notice be provided in both English and Spanish, according to the California Workers' Compensation Institute.

The new language is specified in the following amendment to Insurance Code Section 1871.8:

Ins. Code Sec. 1871.8. An insurer or self-insured employer shall provide the following notice, in both English and Spanish, to an injured worker on or with a check for temporary disability benefits.

WARNING: You are required to report to your employer or the insurance company any money that you earned for work during the time covered by this check, and before cashing this check. If you do not follow these rules, you may be in violation of the law and the penalty may be jail or prison, a fine and loss of benefits.

ADVERTENCIA: Es necesario que usten le avise a su patron o a su compania de seguro todo denier que usten ha ganado por trabajar, durante el tiempo cubierto por este cheque, y antes de cambiar este cheque. Si usten no sigue estos reglamentos. Usted puede estar en violacion de la ley y el castigo podris ser carcel o prision, una multa, y perdida de beneficios.

Previously, the fraud warning was not mandatory, though many claims operations included the notice on the TD check itself, or in an accompanying letter. The effective date for the mandatory, revised language is January 1, 2005, so payers are advised to alert their systems people to gear up for the change. The state has posted a copy of the new law at http://www.leginfo.ca.gov/pub/bill/sen/sb_0001050/sbx4_2_bill_20040828_enrolled.html.

Some workers' compensation claims administrators were initially concerned that the revised fraud language would require another change in the recently revised claim form, but the change only applies to the notice provided on or with the TD check. No change was made to the fraud language on the DWC-1 claim form (Rev. 7/04), approved by the state earlier this summer. If they have not already done so, however, employers and claims administrators should begin using the 7/04 revision of the claim form, as DWC only granted a grace period until October 1 before it will assess penalties for failure to provide injured workers with the new form. The new, 5-part DWC-1 claim form may be ordered from CWCI either by visiting the online bookstore at www.cwci.org or by calling Pat Emslic at (510) 251-9470.

New Addresses and Names Needed

The Status Report needs our members to give us the names and addresses (which can be either U. S. Mail or e-mail) of your clients. This is the best way to keep your clients informed and keeps the CAIIA in front of the insurance industry. The only use of these names and addresses will be to add them to our mailing list for the Status Report and other events sponsored by the CAIIA.

Either call, e-mail or send your new names and addresses to harperclaims@hotmail.com or CAIIA, c/o Harper Claims Service, Inc., P.O. Box 168, Burbank, CA 91504-0168 Or 818 953-9200.

New Directory

The CAIIA needs its members to contact us with any changes from last year's directory. Send your changes to: info@caiia.com

Midterm for March 11-14 is a Cruise

On the CAIIA web site and in this Status Report is the application to take a 4 day cruise to Mexico. This will be the Midterm meeting, also.

Take a great break. Sail with us. Hear about our Association on the way.

HRB Insurance Law Update

Submitted by Hancock, Rothert & Bunshoft, LLP

Safeco Insurance Company of America v. Parks, California Court of Appeal, Second District, Division Six, Case No. B170730, Filed August 26, 2004; Publ. September 23, 2004

The California Court of Appeal held that an insurer reasonably refused to defend where the information made available to the insurer and others disclosed no potential that the person sued was an insured under the terms of the policy.

This case arose from a negligence action brought against a minor by her former boyfriend. Safeco took the position that it owed no duty to defend the minor because she was not an insured under a homeowners policy it issued to the man with whom her mother was living when the boyfriend was injured, and because the policy excludes coverage for injuries arising out of the use of an automobile. The Safeco policy defined "insured" to mean, "you [the named insured] and the following residents of your household: a. your relatives; b. any other person under the age of 21 who is in the care of any person named above." Before Safeco declined coverage, the named insured and every other person involved in the relationship informed Safeco the minor lived at a different residence with her father who was her sole legal guardian and that the minor lived at least part of the time with her mother and the named insured. The court of Appeal held that Safeco reasonably declined the defense of the underlying negligence action because the information made available to Safeco at the time of tender by its insured and other interested parties disclosed no potential that the minor was in insured under the policy. The court said that Safeco "does not have a continuing duty to investigate whether there is a potential for coverage. If it has made an informed decision on the basis of the third party complaint and the extrinsic facts known at the time of tender that there is no potential for coverage, the insurer may refuse to defend the lawsuit.

In reaching its decision, the Court of Appeal relied on *Gunderson v. Fire Ins. Exchange*, 37 Cal.App.4th 1106 (1995).

A Poem for the Insurance People

Last night as I lay sleeping
I died or so it seemed,
Then I went to heaven
But only in my dream

Up there St. Peter met me
Standing at the pearly gates,
He said, "I must check your record
Please stand here and wait."

He turned and said "Your record
Is covered with terrible flaws,
On Earth I see you rallied
For every losing cause.

I see that you drank alcohol
And smoked and partied too,
Fact is, you've done everything
A good person should never do.

We can't have people like you up here
Your life was full of sin."
Then he read the last of my record
Took my hand and said "Come in."

He led me up to the big boss and said
"Take him in and treat him well,
He used to work in Insurance
He's done his time in hell."

Submitted by
Sharon Glenn
Glenn Adjusters, Walnut Creek

Weekly Law Resume

Prepared by Low, Ball & Lynch, Attorneys at Law

Duty – Sidewalk – Obvious Defect

Maria Martinez v. Chippewa Enterprises, Inc., Court of Appeal, Second District, (August 26, 2004).
An open and obvious condition on premises may either eliminate any duty of care or constitute an affirmative defense to a claim of negligence. This case addressed that issue.

Maria Martinez filed a complaint against Chippewa Enterprises, Inc., claiming she slipped and fell on water in a driveway in front of a building. The water apparently was runoff from sprinklers. It was undisputed that the plaintiff had seen the water on the driveway before she walked in it.

Chippewa filed a motion for summary judgment alleging they had no duty to warn plaintiff of the dangerous condition because it was open and obvious. The trial court granted the motion, holding there was no duty owned to the plaintiff. Martinez appealed.

The Court of Appeal reversed. The Court found the trial court's decision to be legally incorrect. The Court stated the fact that the hazard was open and obvious did not relieve the property owner of all possible duty with respect to it. While the defendant argued that the obvious appearance of the wet pavement relieved it from a duty to warn, the Court stated that did not necessarily relieve the landowner from the duty to rectify the condition. The Court stated the controlling principle is that, although the obviousness of a danger may eliminate the duty to warn of its existence, if it is foreseeable that the danger may cause injury despite the fact that it is obvious, there may be a duty to remedy the danger. A breach of that duty may form the basis for liability.

In this case, the trial court's analysis was incomplete. The trial court determined there was no duty to warn because of the obvious nature of the condition. The trial court did not determine whether the defendant was relieved from the duty of eliminating the dangerous condition. This involved a weighing of factors such as the foreseeability of harm, the defendant's advance knowledge of the dangerous condition, and the burden of discharging that duty.

The Court suggested that the obvious nature of the condition posed an issue of comparative fault, but did not warrant relieving the defendant of the legal burden of liability in this situation. The Court therefore felt it was inappropriate to grant summary judgment. The judgment was reversed.

COMMENT
This opinion clarifies the use of the "open and obvious" defense in sidewalk and premises conditions. While the open and obvious nature of a condition may relieve a property owner of the duty to warn, it does not necessarily relieve the property owner of liability for creating the condition or allowing it to exist.

CAIIA *Calendar*

CAIIA Mid-Term
March 11th thru 14th, 2005
~ CRUISE ~ from Los Angeles to Ensanada & back.
Contact: Doug Jackson, 805-584-3494, ext. 11

17th Annual Combined Claims Conference
March 15th & 16th, 2005
Contact Brenda at 888-811-6933.

Insurance Law Update

Submitted by Bruce D. Celebrezze - Sedgwick of San Francisco

September 14, 2004

Standing to Recoup Death Benefits Conferred by Statute

Fremont Compensation Ins. Co. v. Sierra Pine, Ltd., California Court of Appeal

In *Fremont Compensation Ins. Co. v. Sierra Pine Ltd.,* 121 Cal.App.4th 389, 17 Cal.Rptr.3d 80 (2004), the Workers' Compensation Appeals Board ordered an insurance carrier to pay death benefits to the former wife of an employee killed on the job. The carrier sued alleged third party tortfeasors to recoup the money under California Labor Code § 3852, which allows a carrier to "bring an action against" third parties. However, the trial court ruled that § 3852 subrogated the carrier to the rights of the former wife, and because she had no standing to sue for wrongful death, the carrier had no right to sue to recoup compensation benefits.

The California Court of Appeal reversed, holding that § 3852 gives the insurer standing to sue the third party tortfeasor, regardless of whether the money sought to be recouped was a death benefit or a vocational rehabilitation or medical benefit. Standing is conferred by § 3852 independent of the payee's viable wrongful death action.

California Limits Bad Faith Damages to Claims Handling

Jonathan Neil & Associates Inc. v. Jones, California Supreme Court

In *Jonathan Neil & Associates Inc. v. Jones*, 33 Cal.4th 917, 16 Cal.Rptr.3d 849, 94 P.3d 1055 (2004), the California Supreme Court held that an insured may not recover tort damages for an insurer's purported "bad faith" that is unrelated to the handling of a claim for insurance benefits. The dispute centered around premium payments owned by Fred and Mildred Jones' trucking company. They had obtained insurance coverage for their company through the California Automobile Assigned Risk Plan (CAARP). After the policy expired, CAARP's service carrier, Jonathan Neil & Associates Inc., audited the Joneses and, based on the rules for charging for subhaulers, determined that an additional $51,000 was owed in premiums. The Joneses refused to pay. Jonathan Neil & Associates Inc. sued and Joneses responded by countersuing, claiming bad-faith.

Overturning a lower court ruling that had resulted in a multimillion-dollar damage award against the insurance company, the California Supreme held that an insured may only recover "bad faith" tort damages if the insurer has mishandled a claim for benefits under the insurance contract. Insurer conduct unrelated to claims handling will not support tort liability.

(Note: Sedgwick partner Christina J. Imre and special counsel Stephanie Williams filed an amicus brief in Neil that set forth the argument adopted by the court in its opinion.)

Uninsured Motorists

In *Miranda v. 21st Century Ins. Co.*, 2004 WL 772084 (Cal.App. 2004), an insured in an uninsured motorist claim refused to sign a release regarding her medical records. The insurer obtained an order from the trial court requiring that the release be signed. The insured still refused to sign the release. The court then terminated the UM claim as a terminating sanction for discovery abuse.

The California Court of Appeal considered the relationship between the discovery permitted under the state statute governing uninsured motorist claims, Insurance Code § 11580.2, and the Civil Discovery Act in the Code of Civil Procedure. Ultimately, the court found that disobedience of a court order regarding discovery, when discovery is allowed in uninsured motorist claims, the court may dismiss the action. The trial court may exercise its discretion subject to reversal only for a manifest abuse exceeding the bounds of reason. The power to impose discovery sanctions is a broad discretion subject to reversal only for arbitrary, capricious, or whimsical action.

CAIIA Mid-Term Meeting
March 11, 12, 13, 14, 2005
Royal Caribbean – Monarch of the Seas

RATES SHOWN BELOW INCLUDE TAXES, FEES AND GRATUITIES PER PERSON AND BASED ON DOUBLE OCCUPANCY – THIRD AND FOURTH PASSENGERS ACCOMMODATIONS ARE LIMITED TO CERTAIN CABIN CATEGORIES AND AVAILABILITY AT TIME OF BOOKING AND ARE NOT GUARANTEED. RATES AVAILABLE UPON REQUEST.
CANCELLATION INSURANCE NOT INCLUDED AND IS AVAILABLE UPON REQUEST.

Submit your registration by 10/15/04 to be entered into a drawing for a FREE Cruise for two!

Your Name: _____

Company: _____

Address: _____

City/State/Zip: _____

Email Address: _____

If there is more than one Person from your Company, please complete a separate registration form for each cabin requested. We are only collecting a deposit per cabin reserved at this time.

Category	Size	Prices	# of Cabins	Deposit Per Cabin
Superior Ocean View (Category SO)	157 sf	$525.60 per person	☐ x $300	= $_____
Ocean View (Category F1)	119-122 sf	$480.60 per person	☐ x $300	= $_____
Interior (Category K)	119-122 sf	$385.60 per person	☐ x $300	= $_____
Junior Suite (JS) (max 3 persons)	264 sf	$775.00 per person	☐ x $300	= $_____
			Total	= $_____

Early dining is reserved. If you prefer late dining, please check here: ☐

Please make check payable and mail to:

"CAIIA"
c/o Southwest Claims Service, Inc.
PO Box 1810
Simi Valley, CA 93062

If you prefer, you may charge to Visa, M/C, or Amex (please circle card used):

Cardholder Name: _____

Cardholder Signature: _____

Account Number: _____

Expiration Date: /

****You must submit your registration form along with a $300.00 deposit per cabin no later than October 15, 2004 to secure a stateroom for the cruise. No later gators!**

You may also fax registration form, toll free, to (866) 404-2269. E-mail questions to Douglas Jackson at scsdj@southwestclaims.com.

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