CAIIA Status Report

MARCH 2008

DOI KEEPS TRACK OF YOUR ADJUSTERS

Helene Dalcin, Dalcin Claims Consulting, Burbank, and head of our legislative committee has some news for all of our members, especially if you have employees.

CCR 2691.12 Revisited

In anticipation of certain questions in my upcoming deposition regarding the employment of unlicensed adjusters by licensed Independent Adjusters, I felt quite satisfied that I had researched the topic rather thoroughly. I was embarrassed to later learn that I had, quite unintentionally, given an incorrect response regarding the need to provide a list of employees to the Commissioner.

I, like many other licensed Independent Adjusters, am a solo operator. I don't have any employees, so when it's time for license renewal, I simply confirm the information requested by the Department of Insurance and send in my check.

I share my embarrassment so that others will benefit from the research on this subject that was conducted at my request by our president, Peter Schifrin.

An impromptu e-mail poll of some members confirmed that most are aware of the requirement that a list of employees who are "authorized to negotiate claim settlements" must be provided to the Commissioner at the time of license renewal. However, some of us missed the second part of that sentence, which sets forth another requirement that within 30 days from the date of the occurrence, a licensee must inform the Commissioner in writing of the name of any employee hired or terminated subsequent to the filing of the initial list.

I have included the complete citation from the California Code of Regulations.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 10. INVESTMENT
CHAPTER 5. INSURANCE COMMISSIONER
SUBCHAPTER 7. INSURANCE ADJUSTERS
ARTICLE 5. INFORMATION ABOUT EMPLOYEES

§ 2691.12. List of Employees.

Every applicant for a new or renewal license shall file with such application a list of the full names of all employees who are authorized to negotiate claim settlements, and every licensee shall inform the Commissioner in writing within 30 days from the date of the occurrence of the name of any employee hired or terminated subsequent to the filing of the initial list.

Helene DalCin

PUBLISHED MONTHLY BY
California Association of
Independent Insurance Adjusters

An Employer Organization of Independent Insurance Adjusters

Inside This Issue

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PRESIDENT'S MESSAGE

Many of you know that the CAIIA was instrumental in the creation of the Registered Professional Adjuster (RPA) designation. I think it is fair to say that the RPA started out strong, followed by a rough patch in which focus and membership declined.

Doug Jackson, CAIIA Past-President is now the President of the RPA, and he was kind enough to ask me to serve on the board. I think he just wanted someone to back him up in any RPA bar brawl that might occur.

All kidding aside, it is an accomplishment for the CAIIA to regain two seats on the RPA board and to have members involved in the task of returning the RPA designation to prominence.

I believe that the RPA is a very worthwhile designation, which our member firm adjusters should be pursuing. The RPA designation is an excellent means for an adjuster to show the industry that he or she is experienced, knowledgeable, and committed to maintaining continued education in their chosen field.

The RPA website, www.rpa-adjuster.com is rich with information about the organization.

I recently attended presentations on adjuster ethics and customer service. Both would make excellent topics for future CAIIA Seminars.

Each presentation was a reminder of how challenging our jobs are. Adjusters have to maintain honesty and integrity, no matter whom we are dealing with. We are on the front line, and our people skills are tested every day. We encounter stressful situations quite often. We are asked to deal with complex loss and coverage issues. We deserve more praise for our hard work than we often receive.

Since I get to say almost anything I want in this space, I take this opportunity to mention that this year marks the 20 year anniversary of the last great Dodger moment, the World Series game one home run hit by Kirk Gibson. I am optimistic that the World Series will return to Dodger Stadium this year!

If you have any suggestions, questions or just want to say hello, please don't hesitate to call or email me.

PETER SCHIFRIN
President - CAIIA 2007-2008

Coverage Alert

Submitted by McCormick Barstow, LLP - Fresno, CA

Insurance Coverage and Bad Faith

Belz v. Clarendon America Ins. Co. (2007) 158 Cal.App.4th 615.

In 1999, Gary Belz entered into an agreement with Alan Namay, a general contractor, for the construction of a freestanding "healthplex" at his home. During or after the construction, Belz saw water leaks in the healthplex. He thereafter sent a letter to Namay's insurance broker advising that he would be making a claim under the Clarendon America Insurance Company general liability policy issued to Namay. After being advised of the claim, Clarendon contacted its claims handling service to conduct an investigation. During the course of the resulting investigation into the claim, Belz provided Clarendon with a recorded statement and allowed an inspection of the healthplex. However, Namay could not be reached in connection with the investigation.

Belz advised Clarendon that he intended to sue Namay and subsequently filed a lawsuit alleging negligence and breach of contract. Namay failed to notify Clarendon of the suit, and also failed to file a responsive pleading. As a result, Belz filed a request for entry of default and Namay's default was entered the next day. Namay did not inform Clarendon of either the request or the default. Thereafter, a different claims adjuster for Clarendon took over the file and hired a different company to investigate. The new investigator learned from Belz that the lawsuit had been filed and the investigator obtained copies of documents relating to the suit. Clarendon retained counsel who filed a motion to vacate the default based on Namay's "mistake, inadvertence, surprise, or excusable neglect." The superior court denied the motion and entered a default judgment against Namay in the amount of $191,395.90. Clarendon then filed a motion for reconsideration. As part of its motion, Clarendon included a supporting declaration from Namay that stated that he had not contacted Clarendon about the Belz lawsuit because he had given the summons and complaint to a bankruptcy attorney and believed he would handle the matter. The bankruptcy attorney also filed a declaration indicating that he had not been retained to defend the Belz suit and thus did not notify Clarendon. The superior court denied the motion for reconsideration. Namay filed an appeal from the default judgment. The appeal was dismissed as untimely.

Subsequently, Clarendon sent a letter to Namay in which it denied coverage based on Namay's failure to notify it of the suit as well as other coverage defenses. Belz then filed a direct action against Clarendon seeking to recover the amount of the default judgment. Clarendon filed a motion for summary judgment on grounds that the policy precluded coverage under the following provision:

The Company shall not be liable for any cost, payment, expense (including legal expense) or obligation assumed or incurred by an insured without the Company's express consent. The company further shall have no liability for any default judgment entered against any insured, nor for any judgment, or settlement or determination of liability rendered or entered before notice to the Company giving the Company a reasonable time in which to protect its and its insured's interests. . . .

Belz contended that the summary judgment motion should be denied because Clarendon had failed to show that Namay's conduct prejudiced Clarendon. Clarendon contended that a showing of prejudice was unnecessary and that, even if prejudice was required, such prejudice was established by virtue of the fact that Clarendon had been precluded from conducting a thorough investigation of the claim and presenting a defense to Belz' claims. The trial court granted Clarendon's summary judgment motion and Belz appealed.

THE COURT'S RULING

In reversing the trial court's judgment, the Court of Appeal found that the policy provision relating to the company's lack of liability for a default judgment entered prior to notice to the insurer constituted a "notice" provision that, under California law, requires a showing of prejudice. In this regard, the Court of Appeal expressed no view as to what would satisfy such a prejudice requirement, but determined that Clarendon failed to make the proper showing. Although the court recognized that a "no voluntary payments" provision does not require a showing of prejudice, the court concluded that a default judgment does not qualify as a "voluntary payment" as would the insured's incurring defense costs or making settlement payments. Therefore, the court reversed the trial court's decision.

THE EFFECT OF THE RULING

The ruling in this case establishes that even when an insurer specifically states in its policy that it will have no liability where a default judgment has been entered without notice being given, the insurer will still have to show prejudice to avoid liability under the policy.

This opinion is not final. It may be withdrawn from publication, modified on rehearing, or review may be granted by the California Supreme Court. These events would render the opinion unavailable for use as legal authority.

THE CALIFORNIA ASSOCIATION OF INDEPENDENT INSURANCE ADJUSTERS

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March 20, 2008

Pleasanton, CA

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As an authorized California DOI education provider (CDI# 20638), the CAIIA will be presenting its first 2008 SEED (Seminar for the Evaluation of Earthquake Damage) program seminar. The SEED program addresses the training and certification required by CCR, Title 10, Chapter 5, Subchapter 7.5.1, Article 1, Section 2695.40 through Section 2695.45. Those regulations set forth the requirements of Insurance Adjuster Training for Evaluating Earthquake Damage which are now required for any insurer who may have earthquake claims in the state of California. As an added bonus, we will be providing SIU Regulations certification.

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Northridge, CA 91324

Questions? Call or E-mail Peter Schifrin
(818) 734-0215
pschifrin@sgdinc.com

Schedule:

Registration	8:00 a.m to 9:00 a.m.
FCSPR & SIU	9:00 a.m. to 10:15 a.m.
SEED Seminar	10:30 a.m. to 5:00 p.m.

Please visit www.caiia.com for more information.

**CAIIA will agree to offset any membership dues for Non-CAIIA Independent Adjusting Firms joining the CAIIA within 30 days, up to $80.00 total for each adjuster, from non-member firm with a cap of $160.00.*

Weekly Law Resume

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

Torts - Motorist Who Gestures For Other Driver To Turn Owes No Duty of Care

Gilmer v. Ellington, (January 23, 2008)Court of Appeal, Second District

We've all done it. You approach an intersection at the same time as another vehicle. The other driver intends to turn into your path. Each driver waits for the other to proceed. Finally, you motion to the other vehicle to go first. The question in this case is whether the motioning driver can be found negligent if the other driver is involved in an accident with a third vehicle.

Defendant Rebecca Cherry approached a four-way intersection in Southern California intending to turn left. She waited for oncoming traffic to clear, while using her cell phone at the same time. One of the oncoming motorists was co-defendant Kyseme Ellington. Ellington yielded to Cherry and gestured for her to turn. Cherry began her left hand turn. At the same time, Plaintiff Daniel Gilmer was approaching the intersection on a motorcycle in the same direction as Ellington. He did not yield to Gilmer and a collision ensued. Gilmer sued both Cherry and Ellington for negligence. The trial court granted Ellington's motion for judgment on the pleadings. Plaintiff appealed. The Second District Court of Appeal affirmed.

On appeal, Plaintiff contended that the operator of a motor vehicle has a duty to use reasonable care in signaling other drivers to initiate a turning maneuver. Plaintiff argued that while no California court had expressly ruled on the issue, a majority of other states had adopted such a rule. The Second District disagreed, holding that the gesturing motorist (Elllington) owed no legal duty.

Under California law, there are several factors to be considered in determining the existence and scope of a duty of care. In this case, the Court of Appeal found that several key factors were missing. In particular, the Court held that a yielding motorist bears no "moral blame" for a collision between a left turning driver and a driver that does not yield the right-of-way. This is because the Legislature has imposed upon left turning drivers, not oncoming drivers, the duty to determine whether it is safe to make the complete turn across all lanes of traffic (California Vehicle Code section 21801). Further, placing such a duty on the motioning party would create an unreasonable burden. Yielding vehicles are often incapable of determining whether a turning vehicle can clear all lanes of traffic. The Second District was also concerned that by placing a duty upon yielding motorists, this could further erode common courtesy on roadways.

The Court of Appeal acknowledged that Plaintiff had established certain other factors ordinarily considered in ascertaining duty. However, the Court, balancing the various factors, ruled that there should be an absence of duty in this case. The judgment was therefore affirmed.

COMMENT

Generally, all people are required to use ordinary care to prevent others from being injured. This case illustrates that the existence of a legal duty to use reasonable care in a particular factual situation is a question of law for the court to decide. Here, the motioning driver owed no such duty of care to the turning motorist.

Coverage - Property Insurance - Mold Exclusion

Rudolf Andre De Bruyn v. Superior Court, (January 14, 2008)Court of Appeal, Second District

The effect of exclusions in a property insurance policy in light of the doctrine of efficient proximate cause continues to raise questions. This case considered the application of a mold exclusion to deny coverage from mold damage resulting from a covered discharge of water.

Rudolf Andre De Bruyn purchased insurance from the Farmers Insurance Exchange. It was an all-risk policy that covered sudden and accidental discharge of water from any plumbing or household appliance. The policy also contained an exclusion for mold. Upon return from a vacation, De Bruyn found a toilet had overflowed and damaged his home. He also discovered a leaking dishwasher. Mold was discovered behind the leaking dishwasher. He made claim to Farmers and Farmers paid the water damage, but denied payment for damage to the dwelling from mold.

De Bruyn sued Farmers for breach of the covenant of the good faith and fair dealing. The trial court sustained Farmer?s demurrer without leave to amend. Upon a petition for writ of mandate to the Court of Appeal, the writ was granted and heard.

The Court of Appeal discharged the writ, affirming the decision of the trial court. The Court noted that under California law, where a loss is caused by a combination of covered and specifically excluded risks, the efficient proximate cause of loss must be determined in order to resolve the coverage issue. A carrier may not draft an exclusion that attempts to circumvent the efficient proximate cause doctrine. However, an insurer may draft a policy that excludes coverage for particular injuries or damages in certain circumstances while providing coverage in other certain circumstances. The policy must plainly and precisely communicate the excluded risk in order for it to be enforceable.

This policy covered sudden and accidental release of water from a plumbing system in the home. However, it clearly stated that damage caused by mold was never covered, however caused.

The Court held that Farmers was not prohibited from expressly providing coverage for some, but not all manifestations of water damage, and expressly providing no coverage for losses caused by the mold resulting from a sudden and accidental discharge of water. The Court stated that in order to be enforceable the policy had to plainly and precisely communicate the excluded risk to a reasonable insured. The Court found that it did so in this case. The Court stated the policy clearly communicated that mold damage caused by sudden and accidental release of water was an excluded peril. The Court held that this exclusion did not violate the efficient proximate cause doctrine. Therefore, the ruling of the trial court sustaining the demurrer of Farmers was affirmed.

COMMENT

This decision relies upon the California Supreme Court case *Julian v. Hartford Underwriters Insurance Company* (2005) 35 Cal.4th 747 for its analysis. Julian held an insurer may exclude coverage in certain circumstances, while providing coverage in other circumstances.

California Association of Independent Insurance Adjusters
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3/27	6:00 P.M.	Dinner	[ ]	[ ]
3/28	8:00 A.M.	Breakfast	[ ]	[ ]
3/28	9:00 A.M.	Business Meeting	[ ]	[ ]
3/28	12:00 P.M.	Lunch	[ ]	[ ]
3/28	12:00 P.M.	Adjustabelle's Lunch		[ ]

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❑ Two Day Conference Registration	$190.00
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❑ One Day (Wednesday, March 12, 2008)	$95.00

No, I do not work in the fields listed above. Please register me for the following rate:

❑ Two Day Conference Registration	$400.00
❑ One Day(Tuesday, March 11, 2008)	$200.00
❑ One Day (Wednesday, March 12, 2008)	$200.00

Session Sign-Up:

For purposes of seating/handouts, please select the sessions and events you plan on attending.

Tuesday, March 11, 2008

9-10:15am

❑ GENERAL SESSION - Claims Professionals Have Emotions Too

11-Noon

❑ Track 1 (Liability) Liability Claims Lifecycle/Performance Measurement
❑ Track 2 (Property) Property Subrogation in an Hour
❑ Track 3 (ISC) Dispelling Myths and Folklore in Chiropractic Care

Noon-1:30pm

❑ Lunch - CA Insurance Commissioner Steve Poizner (Invited Speaker) Dessert in the Exhibit Hall

1:30-2:30pm

❑ Track 1 (Liability) Jury Verdicts
❑ Track 2 (Property) Resolving "Problem" Property Claims
❑ Track 3 (ISC) Identity Theft – Its Causes and Cures

3:15-4:15pm

❑ Track 1 (Liability) How Litigation is Affected by Technology
❑ Track 2 (Property) Restoring Sunken Treasures
❑ Track 3 (ISC) The Anatomy of a Medical Mill

Wednesday, March 12, 2008

9-10:15am

❑ GENERAL SESSION - If You Can Drive a Car You Can Change Your Life

11-Noon

❑ Track 1 (Liability) Reflex Sympathetic Dystrophy/Pain Syndromes
❑ Track 2 (Property) Handling Property Claims, Avoiding Bad Faith
❑ Track 3 (ISC) Injury Causation Analysis

Noon-2

❑ Lunch and Awards - Dessert in the Exhibit Hall

2-3pm

❑ Track 1 (Liability) Changing the Claims Game
❑ Track 2 (Property) Event Data Recorders – What They Do For You
❑ Track 3 (ISC) The Anatomy of Staged Collisions

3-4:15pm

❑ CLOSING SESSION - The Reality of Minor Impact Collision Dynamics

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Smart Answers

SMART ANSWER #6

It was mealtime during a flight on Hooters Airline. "Would you like dinner?" the flight attendant asked John, seated in front. "What are my choices?" John asked."Yes or no," she replied.

SMART ANSWER #5

A flight attendant was stationed at the departure gate to check tickets. As a man approached, she extended her hand for the ticket and he opened his trench coat and flashed her. Without missing a beat, she said, "Sir, I need to see your ticket, not your stub."

SMART ANSWER #4

A lady was picking through the frozen turkeys at the grocery store but she couldn't find one big enough for her family. She asked a stock boy, "Do these turkeys get any bigger?" The stock boy replied, "No ma'am, they're dead."

SMART ANSWER #3

The cop got out of his car and the kid who was stopped for speeding rolled down his window. "I've been waiting for you all day," the cop said. The kid replied, "Yeah, well I got here as fast as I could." When the cop finally stopped laughing, he sent the kid on his way without a ticket.

SMART ANSWER #2

A truck driver was driving along on the freeway. A sign comes up that reads, "Low Bridge Ahead". Before he knows it, the bridge is right ahead of him and he gets stuck under the bridge. Carts are backed up for miles. Finally a police car comes up. The cop gets out of his car and walks up to the truck driver, puts his hands on his hips and says, "Got stuck, huh?' the truck driver says, "No, I was delivering this bridge and ran out of gas."

SMART ANSWER OF THE YEAR 2007

A college teacher reminds her class of tomorrow's final exam. "Now class, I won't tolerate any excuses for you not being here tomorrow. I might consider a nuclear attack or a serious personal injury, illness, or a death in your immediate family, but that's it, no other excuses whatsoever!"

A 'smart' guy in the back of the room raised his hand and asked, "What would you say if tomorrow I said I was suffering from complete and utter sexual exhaustion?" The entire class is reduced to laughter and snickering. When silence is restored, the teacher smiles knowingly at the student, shakes her head and sweetly says, "Well, I guess you'd have to write the exam with your other hand."

Two bonus extras:

A blond goes to the post office to buy stamps for her Christmas cards. She says to the clerk, "May I have 50 Christmas stamps?" The clerk says, "What denomination?" The blond says, "God help us. Has it come to this? Give me 6 Catholic, 12 presbyterian, 10 Lutheran and 22 Baptist.

A woman is standing nude looking in the bedroom mirror. She is not happy with what she sees and says to her husband, "I feel horrible; I look old, fat and ugly. I really need you to pay me a compliment." the husband replies, "Your eyesight's damn near perfect.

He never heard the shot . . .