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## IN THIS ISSUE:

Past President's Message	1
President's Message	1
2006 Legal Developments	2
New PCAP Secretary	3
Treasurer Report	3
CCNC 2006 Update	3
Building Codes for Gulf States	3

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## Past President's Message

For the past two years, it has been my pleasure to be the president of our fine organization. Now that I am the official "Past President," and can be neither impeached nor removed, I can confess that the real "past" president - albeit unnamed - has actually been Bob Fox. It gives me great pleasure to announce that after some serious arm-twisting, Bob Fox has agreed to step out of the shadows and continue as the real president of PCAP. If you were able to turn up the volume you would most certainly hear a huge round of applause.

Bob Fox began his insurance career in 1956 (yes - that would be 51 years ago) with Western Adjustment & Inspection Company - a firm that later became GAB. While with GAB, his duties included Property Adjuster, Marine Surveyor/Manager and Branch Manager. His next assignment was with Continental Insurance Company as a Regional Property General Adjuster and a Home Office General Adjuster. At Continental he also became involved in the profession as an instructor in educational training programs as well as in major account loss adjustments for

both domestic and international matters.

In 1982 Bob joined Toplis & Harding - later McLarens Toplis - as an Executive General Adjuster. His responsibilities included adjusting major account claims under commercial property, inland marine and transportation risks. Administrative responsibilities included training and education, standards and procedure programs and internal audit assignments. He "retired" from McLarens Toplis in 1997. Currently, at Robert Fox Adjusters, Bob continues to provide service to clients involving commercial property, business income, boiler and machinery, transportation and commercial property damage liability investigations and adjustments.

In his free time, Bob is involved in an assortment of activities, including serious biking and traveling. For those of us contemplating (or wishing for) retirement, we could all take a few lessons from our new president. Welcome Bob!!!

Irene K. Yesowitch,

Past President

## President's Message



President of PCAP. Now that I have the job-- Oh Sister Where Art Thou!

The Property Claims Association of the Pacific is a stellar association.

As with every organization, it is the people like Mike Diliberto, Rene Gamboa, Scott Schwartz

and I who will try our best to keep it that way. Two things I just learned. Never follow a premier act and don't volunteer for anything. I blew it! Thank you Irene Yesowitch for your years as President of PCAP. Now that I have the job-- Oh Sister Where Art Thou!

At our last board meeting we had a flow of ideas for speakers, events and locations that we hope will entice you to join us for luncheon programs. As in the past, Mike is working with the Giants to field another Baseball Event this year. Rene is putting together an expanded version of our newsletter making it even more informative. Scott has a couple great ideas for luncheon locations that he is checking out. And together we are trying to pick interesting topics and speakers for your benefit and education. Irene is still with us recruiting new members and to add to that effort we intend to involve past presidents to assist in expanding our member base.

Bryan Harrison is putting the finishing touches

(Continues on page 2)

## 2006 Legal Developments

On February 22, 2007 PCAP hosted its annual insurance law year in review program during which Past President Irene Yesowitch of Long & Levit and Jay Pardini of Lewis, Brisbois, Bisgaard & Smith gave a presentation on legal developments in 2006 that impacted the insurance industry. Below are some of the decisions discussed at the presentation.

In *1231 Euclid Homeowners Association v. State Farm Fire & Casualty Co.* (2006) 135 Cal.App.4th 1008, the Second District Court of Appeal affirmed the trial court's entry of summary judgment in favor of State Farm regarding a breach of contract and bad faith claim alleged by the HOA based on State Farm's alleged failure to pay for the repair of damages sustained by a ten-unit residential condominium complex. In that case, the HOA withdrew the claim after it and State Farm had inspected the building. Eight years later, the HOA attempted to reopen the claim under the extension of the statute of limitation under California Code of Civil Procedure § 340.9. The court found that the HOA had voluntarily withdrawn its claim, thereby terminating State Farm's obligations and that § 340.9 did not give or create any rights for the HOA beyond the one-year window to file a claim.

*Lincoln Fountain Villas Homeowner's Association v. State Farm & Casualty Insurance Company* (2006) 136 Cal.App.4th 999 also involved a claim for damage arising out of the Northridge earthquake. State Farm adjusted the claim and determined that the HOA damages fell below the \$220,969 deductible. The Homeowner's Association prepared its own estimate and State Farm agreed to settle the claim for \$296,585. After accounting for the deductible, State Farm paid \$32,777.53. Later, the HOA retained a contractor who made repairs for \$128,132.69 and the HOA brought an action under C.C.P. § 340.9 for breach of contract and bad faith based on alleged later-discovered damages. State Farm moved for summary judgment and the court found that State Farm did not breach its contract by failing to investigate "newly presented earthquake damage information," finding that §

340.9 does not impose on insurers a new duty to investigate claims.

The court also rejected the argument that State Farm incorrectly determined the actual value of the loss given that the HOA negotiated directly with State Farm and agreed on a replacement cost valuation for the damage to the complex. Because the parties agreed to the cost of repair, there was no breach of contract.

*Benavides v. State Farm General Insurance Company* (2006) 136 Cal.App.4th 1241 arose out of mold damage to the insured's condominium in Santa Monica. The insured sued State Farm and an upstairs condominium owner alleging that State Farm had improperly investigated the claim and improperly denied the claim. At trial, a jury found that State Farm had not breached its contract, but awarded damages for State Farm's "negligent investigation" of the claim. The Second District Court of Appeal reversed the jury's decision finding that absent coverage for the mold damage, State Farm was not liable for negligent investigation of the claim. In reaching its decision, the Court noted that the relationship between the parties is contractual and that where no benefits are due, a negligent investigation does not frustrate the insured's right to the benefits of the contract.

In *Kacha v. Allstate Insurance Company* (2006) 140 Cal.App.4th 1023 the Fourth District Court of Appeal granted the insured's petition requesting the court to vacate an appraisal award. The parties' dispute arose out of smoke and heat damage sustained by the insured's property as a result of a wild fire.

Allstate submitted a form for the appraisal award, which included findings relative to the nature and scope of the damages claimed by Kacha. Kacha objected as to the form and took the position that the appraisal was limited to the value of the loss only. Subsequently, the panel delivered an appraisal award. After requesting that the appraisal award be corrected, Kacha filed a petition to vacate the appraisal award arguing that the panel exceeded its authority by making coverage determination reserved to Allstate, and

that it did not have authority to determine if a loss occurred or if the loss claimed caused the damage. The trial court denied Kacha's petition. On appeal, however, the appellate court held that an appraisal is limited to determining the actual cash value of the loss and that appraisers are not authorized to determine coverage for such loss, relying in part on *Safeco Insurance Company v. Sharma* (1984) 160 Cal.App.3d 1060, 1063 and Insurance Code § 271.

Finally, in *Bernstein v. Travelers Insurance Co.* (2006) 447 F.Supp.2d 1100 the United States District Court for the Northern District ordered Travelers to disclose information regarding its policy reserves in connection with a first-party bad faith lawsuit. The court followed its holding in *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599. The district court, however granted Travelers' request for a protective order prohibiting plaintiffs and their counsel from using information for any purpose other than the litigation and from disclosing it to anyone who is not an officer or agent of the court or party to the lawsuit.

-Rene Gamboa

Mr. Gamboa is a partner at Lewis Brisbois Bisgaard & Smith, LLP whose practice focuses on insurance coverage and bad faith litigation.

## President's Message

(Continued from page 1)

on our web site making it more user friendly and informative. When he is finished, we'll ask you to check it out. For now any suggestions from you are most welcome and can be directed to me at [rsefox@sbcglobal.net](mailto:rsefox@sbcglobal.net). Topics, speakers and locations are a priority. See you at the next luncheon.

Bob Fox

## Treasurer Report—Year End 2006

The financial results for the year-ended December 31, 2006:

Beginning Balance \$4,437

Revenue:

Member Dues	\$1,970
Member Events	3,769
<u>Total Revenue</u>	<u>5,739</u>

Expenses:

Member Events	4,204
Insurance	508
CCNC	463
Website	298
Other	158
<u>Total Expenses</u>	<u>5,631</u>

Net Income \$108

Ending Balance \$4,545

Our 2006 year ended well as we just about broke even in providing member meetings, social gatherings and supporting the CCNC.

Thank you again to our members for supporting PCAP and our sponsors for the annual PCAP Giants game; RGL Accountants, Hagen Streiff Newton Oshiro, Matson Driscoll & Damico, Long & Levit, MKA, CCNC, Saylor, Greer & Kirby, Belfor and Ward-Tek.

For 2007, we are starting off well with a very good response on new and renewal memberships. Please remember, your annual dues of \$35 entitles you to several FREE lunch programs and discounted PCAP Giant's game tickets. This is a great value.

As in each year we are expecting more PCAP members as each of our lunch programs occurs. The earlier you obtain your annual membership the easier it is to offset the cost with free lunch programs and discounted tickets. So please join now! If you need a membership application or have questions about PCAP, please send me an email at mdiliberto@us.rgl.com.

Michael Diliberto,

Treasurer

## CCNC 2006 Update

We had a very successful conference in Sacramento in September. Thanks to all that attended and especially those PCAP members that contributed to the conference and the programs. PCAP was well represented with Michael Sowerwine, Irene Yesowitch, Jay Pardini, Steve Tilghman, Lissa Cooley, Gil Malgrem and Rene' Gamboa.

Steve Tilghman and I are already working on the program for next year. If you are interested in making a topic presentation or have a topic recommendation we certainly would like to hear from you. The location for next year will be in Sacramento again, but the facilities have not yet been chosen. Stay tuned for more updated information on the conference.

-Bob Fox,

Education Committee

## New PCAP Secretary

PCAP would like to welcome Scott Schwartz as its newest addition to the board. Scott will act as the secretary. Scott D. Schwartz is a partner in the law firm of Rust, Armenis & Schwartz, an AV-rated firm, founded in January 1963. The firm has offices in San Francisco and Sacramento. The firm has a general civil litigation, business and insurance practice emphasizing first and third party insurance coverage and defense throughout Northern California. Mr. Schwartz has extensive experience handling cases involving first and third party insurance coverage and related issues, including fraud and the defense of insurers against claims of "bad faith." The board looks forward to working with Scott.

## Building Codes for Gulf States

The National Institute of Standards and Technology (NIST) is recommending stricter adherence to existing building standards and model building codes, good building practices, and a greater recognition of the risks posed by storm surge. The NIST report documented the findings by experts from the private sector, academic, and federal entities who studied the performance of a variety of structures. It made 23 recommendations for improvements in the way buildings are designed and constructed in hurricane-prone regions across the United States. Some suggestions include: state and localities consider licensing roofing contractors and field in-

spections to confirm that an adequate number of fasteners are used and correctly placed; not permitting gravel roofs in high wind zones to prevent the damage caused by wind borne gravel from nearby structures; adopt and enforce a code requiring a buildings critical equipment be placed above potential flood levels; anchoring and reinforcing masonry walls as required by model codes to prevent their failure.

-Bob Fox

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## Katrina Revisited!

Join PCAP on April 19, 2007 for a topical discussion of Katrina. Bill Schult of Greer & Kirby, Mary Furst of RGL, and attorney Greg Tolson will discuss the challenges arising from Katrina. Mr. Schult will address the handling of salvage from the storm. Ms. Furst will discuss the difficulty in determining when the period of restoration ends as well as other business income loss issues. And, Mr. Tolson will discuss legal and coverage issues presented by Katrina as well as the current status of litigation arising from it.

The Katrina program will take place at Marsh, 1 California Street, 9th Floor, San Francisco, California.

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## Upcoming Events

Join us for more upcoming PCAP events such as the ever popular annual San Francisco Giants Night, the upcoming Katrina Program, and PCAP's August program. More information regarding these events will follow! Also, join PCAP at the September CCNC conference.

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Working to better serve its members and the insurance industry, PCAP's mission is to provide a forum for the frank discussion of issues related to property loss adjustment, and a social venue for fostering professional relationships.



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René I. Gamboa, Esq., Vice President, Property Claims Association of the Pacific  
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