

**PROPERTY
CLAIMS
ASSOCIATION**

◆ *of the Pacific* ◆

San Francisco, California

PCAP NEWSLETTER

June 2007

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www.propertyclaimsassociation.org

President's Message

We had a great program in April. My thanks to Bill Schult and Tom Richmann of Greer and Kirby, Mary Furst of RGL, and Greg Tolson Esq., for their participation and making the presentation most informative. If you forgot about "Katrina", this session brought it back in focus. We in the insurance industry will all be affected by the resulting losses and litigation this catastrophe produced. See the latest from Greg in the article he has provided for us this month. California won't be immune to the issues faced along the Gulf coast.

courage you to check it out at www.propertyclaimsassociation.org.

We are always looking for articles to publish in our newsletter and I ask any member interested in making a contribution, please let us know. There is always change going on in our industry and one of the best ways to make our members aware is to inform them through the use of this newsletter. Take advantage of it!

We have another very interesting program ("To Dry or Not to Dry—That is The Question") coming up in June on the 22nd. It will be held in Walnut Creek. We are hoping to encourage more participation both by East Bay Association members and our members who work across the bay. Look for our flyer for information about this program. You will want to attend.

Last but not least, we lose the contribution of Rene' Gamboa who is leaving the board and welcome John P. Kelly as his replacement. Thank you Rene' for the years spent on behalf of PCAP. John is an independent adjuster and has been an adjuster since 1978. He started with UAC, was then with the Hartford, Toplis and Harding and now has his own firm, John P. Kelly & Associates.

Hope to see you at our next luncheon.

Bryan Harrison completed the upgrading of our web site. It looks professional, and I en-

Bob Fox

Katrina Revisited

Katrina devastated large sections of coastal Louisiana and Mississippi on August 29, 2005. Storm surge breached the New Orleans' levees at multiple points, leaving 80% of the city submerged. Hurricane Rita reflooded areas three weeks later. The population of New Orleans has declined from 462,000 to 190,000.

Extensive litigation has followed. Extensive coverage decisions may provide a guide when California next experiences levee failures. If you have access to the PACER system the Katrina Canal Breaches Consolidated Litigation may be found under Case 2.05-cv-04182.

There were an estimated 1.75 million claims from Katrina, involving 15,000 adjusters.

For the most part, the Louisiana courts (so far, and subject to pending appeals) have indicated that the ISO flood language is ambiguous and will not exclude coverage notwithstanding anti-concurrent cause introductory phrases such as 'loss caused directly or indirectly by any of the following: 'water damage, meaning...flood...'

Investigation by the Corps of Engineers was extensive. One finding was that there was no evidence of government or contractor negligence or malfeasance.

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There has been some approval to date of State Farm lead-in anti-concurrent cause language and for a Hartford form that mentions levees.

Holdings have indicated that an undefined term 'flood' in a water damage exclusion should reasonably be interpreted to be limited to flooding caused by natural acts, and not those man-made.

The existence of the NFIP programs has been held not to affect whether the HO policies do or do not exclude floods. If an insurer wanted to exclude coverage for damages covered by NFIP, it could state that in an exclusion.

Levee building in California beginning in the 1840's concentrated flood flows and contributed to problems made worse from hydraulic mining after the 1848 Gold Rush. Today, over 2,000,000 people, 800,000 acres, 2/3 of the states drinking water, and \$80 billion of property are protected and transported by 1100 miles of levees and structures on the Sacramento River Flood Control Project. Floods have occurred in 1986, 1995 and 1997. The American Society of Civil Engineers gave our levees system an 'F' grade. In November 2006 voters approved \$5 billion in borrowing to shore up our levee system, which is the largest and most complex outside the Mississippi Valley.

Regardless how the insurance picture ultimately develops in California, case law so far has imposed liability for the consequences of levee failures based upon inverse condemnation

Notwithstanding the Governor's emergency declarations, it is estimated that upgrading our levees will take 20 years.

Greg Tolson

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Treasurer's Report

The financial results for the four months ended April 30, 2007:

<u>Beginning Balance</u>	<u>\$4,545</u>
<u>Revenue:</u>	
<u>Member Dues</u>	<u>\$1,359</u>
<u>Expenses:</u>	
Member Events	344
Insurance	478
Website	346
<u>Other</u>	<u>90</u>
<u>Total Expenses</u>	<u>1,258</u>
<u>Net Income</u>	<u>\$101</u>

Ending Balance \$4,646

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

As in each year some PCAP members join at one of our lunch programs, which is fine. However, 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 contact me at mdiliberto@us.rgl.com or call at 415/956-8323.

We are beginning the planning process of the annual **PCAP Giants game**. Once again, we are hopeful to have the event at Club Level and are looking to upgrade the seating. If you would like to consider becoming a sponsor of this event, please contact me for more information.

Michael Diliberto

REASONABLE INTERPRETATION OF POLICY BUT STILL BAD FAITH

The California Court of Appeal for the Second Circuit has held that even if the insurer's interpretation of the language of its policy which led to the denial of the insured's claim was reasonable, it does not follow that the denial of the insured's claim could not be in bad faith. The reason is that the insurance company can be in bad faith if it did not fully investigate all of the possible grounds for the insured's claim.

In *Mary Ann Jordan v. Allstate Insurance Company*, 07 C.D.O.S. 3012 (March 2007), the appellate court reversed a summary judgment in favor of the insurance company when the insurance company denied a claim for damages caused to the insured when windows fell out of a wall of her living room and floorboards in the corner of her living room had "given way". The insurance company denied the claim on the basis of an exclusion in its policy for "wet rot or dry rot".

The court found that although the insurance company's interpretation of the language of its policy was reasonable, the court also found that the company did not conduct an adequate

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PCAP June 2007 Lunch Program

Please join us for this great lunch program sponsored by Madsen Kneppers at the Marriott Renaissance Club Sport in Walnut Creek. Make your reservations now.
Free to members!

To Dry or Not To Dry- That is the Question!

(Earn 1.5 RPA, and CPCU CE Credits!)

Please join us to hear a presentation by Adrian Frank of Madsen, Kneppers & Associates. As a Master Certified Restorer he will discuss restoration and dry-down services on losses and to what extent they should be undertaken. Mr. Frank will include an explanation of the restoration industry drying standard, S-500, the economics of moisture control and dry-down, defining the scope of work, and the appropriateness, effectiveness, and duration of the process.

When: June 22, 2007 (Friday)
Where: Marriott Renaissance Club Sport Hotel
(One block from Pleasant Hill Bart Station)
2808 Jones Road
Walnut Creek, CA 94597
Meeting: 12:00 noon to 2:00 pm
Sponsor: Madsen, Kneppers & Associates (www.mkainc.com)

The lunch is free to members and a \$7.00 charge will be assessed non-members.

Because space is limited, reservations are a **must**. Please RSVP for you and your guests to Mike Diliberto-RGL Accountants at 415/956-8323 or email reply to mdiliberto@us.rgl.com by Tuesday, June 19, 2007.

Please visit us on the web at propertyclaimsassociation.org

investigation to determine whether the loss could have been covered under the collapse portion of the same policy. The issue of whether there was coverage for collapse depended upon factual issues which should have been but were not adequately investigated by the insurance company and, hence, there was a potential bad faith claim against the insurance company for failure to make this investigation.

The lesson to be learned is that an insurance company has a duty to investigate all possible causes of loss. Even if it reasonably interprets its policy to deny coverage on one of the potential causes of loss, it still must do an adequate and complete investigation of all other causes.

John B. Hook

CCNC 2006 Update

Activity on the program is progressing. The location has been established. It is the Hyatt Regency in Sacramento and will be held on September 13 and 14.

A new fee scheduled was voted on by the board and will be \$75 for one day and \$125 for a two day pass for adjusters and independent adjusters only. All other attendees will pay \$300 for both days. No discounts will be offered for a one day pass.

Again, PCAP members are represented on the board and committees. Steve Tilghman and Bob Fox are on the Education committee. Michael Sowerwine chairs the Finance committee; Lisa Schwichtenberg is Secretary for 2007 and also on the Promotions committee. Some members have been asked to be speakers. As the program gets set, we will identify them for you.

The conference will offer certifications for DOI regulations and SIU requirements plus RPA, CPCU, and MCLE continuing education credit.

Check out www.claimsconference.org for more information and registration.

Bob Fox
Education Committee

**PCAP GIANTS NIGHT OUT- August 2007 -
Club Level Event**

Date to be Announced

Upcoming Events

A Mock Appraisal –

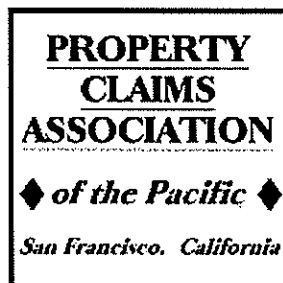
What to Do and What Not to Do

October 18, 2007

11:00 am—3:00 pm

Chubb Pleasanton Meeting Room

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.



John P. Kelly, Vice President, Property Claims Association of the Pacific
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