



PCAP NEWSLETTER

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2005 OFFICERS

President

Irene Yesowitch, Esq.
Long & Levit
415.397.2222

Vice President

René I. Gamboa, Esq.
Rudloff Wood & Barrows LLP
510.740.1500

Secretary

Robert Fox
Robert Fox Adjusters
650.589.1438

Treasurer

Michael Diliberto, CPA
RGL Accountants
415.956.8323

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President's Message

By Irene Yesowitch

This month, in return for letting me make a "pitch" to those of you who are reading this message and have not yet paid their \$35.00 dues, I will report on some proposed regulations that may effect you.

Okay, first the "pitch." Years ago many of us were proud to be part of at least one, if not more, insurance organizations or groups geared towards the sharing and dissemination of information, education, and insight into the changes and fluctuations of our industry. We met monthly or quarterly, "broke bread," and shared. Camaraderie, while not an "official" benefit of membership, nonetheless was as important as contacts we made and kept throughout the years.

Regrettably, with the move of our predecessors to retirement and the

downturn of the economy, many of these organizations and groups were reduced to a handful of members, or worse, simply ceased to exist. PCAP, on the other hand, continued and continues – still providing interesting educational programs, fun events and a feeling of belonging to those of us able to participate on an on-going basis. Yet, we too have felt the pressure to survive. So – to support and as a favor to PCAP, to you and to me – seriously consider joining us. Our website has a handy dandy form that can easily be printed.

Now for the "quid pro quo," calling secret broker commissions a "serious problem that betrays the public's trust," Insurance Commissioner John Garamendi announced new regulations that will require agents and brokers to disclose any financial incentive they

Case Update

By René Gamboa

A little over a month ago, the California Supreme Court decided the case of *Julian v. Hartford* (2005) 35 Cal.4th 747. Because of the complexity of the case, and due to space constraints, we cannot provide a full analysis of the case in this article. However, because the case is of particular interest to the insurance industry, we want to make you aware of the decision. In *Julian*, the insureds brought an action against their carrier to recover damage to their home from a landslide, as a result of heavy rain and the alleged negligence of the developer. The trial court granted summary judgment and it was affirmed by the Court of Appeals. The

issue decided by the Supreme Court was whether an insurer is prohibited by Insurance Code Section 530 (which incorporates the efficient proximate cause doctrine) from drafting policy provisions that leave intact coverage for some but not all manifestations of a particular peril. The Supreme Court limited its decision to the "weather conditions" clause in the policy and found that it did not violate Insurance Code Section 530, or the efficient proximate cause doctrine.

For a copy of the case, or a complete explanation, please contact Rene Gamboa at rgamboa@rwblaw.com.

CCNC Update

The CCNC two-day conference and training seminars are set for September 13 and 14, 2005 at the Oakland Marriott in Oakland, CA. You can register to attend one or both days by logging on to, www.claimsconference.org.

A favorable pricing tier has been established to facilitate obtaining educational benefits and continuing educational credits as follows:

Carrier Adjusters, Self Insureds and Municipalities: **\$65 both days**; or \$35 for Tuesday or Wednesday only.

Independent Adjusters, Agent, Brokers and RPA's: **\$75 both days**; or \$45 for Tuesday or Wednesday only.

Attorneys: **\$175 both days**; or \$125 for Tuesday or Wednesday only.

All others: **\$250.00 for one or both days**.

Payment can be made by check and sent with a completed registration form. The web site also provides credit card registration through PayPal.

Log on to the web site and scan the entire program. CCNC has approval for 15 points of CDP credit for CPCUs; credits for DOI producers, RPA and MCLE credits are also approved.

Should you or your organization be interested, the conference is looking for exhibitors and sponsors.

Stay tuned for more information on a great opportunity for "Navigating the Course of Change."

Bob Fox, Education Committee

President's Message, *continued*

would receive for selling certain insurance products and steering business to specific companies.

Targeting a practice that has sparked a national controversy and criminal charges against industry executives, Commissioner Garamendi said his proposal would help clarify and strengthen the laws prohibiting these practices.

The regulations are still under public review, after which they must gain the approval of the state's Office of Administrative Law. The proposal covers various requirements for agents and brokers, including:

- A broker who fails to disclose to a client all material facts surrounding the broker's receipt or potential receipt of income from a third party, which income derives in whole or in part from a transaction on behalf of the client, violates Insurance Code section 790.03(b).
- A broker who places his or her own financial or other interest above that of his or her client violates Insurance Code section 790.02.

A broker violates Insurance Code section 790.02 if, with either new or renewal business, he or she:

- (1) Fails to provide the client with the proposal of a best available insurer;
- (2) Advises a client to select an insurer other than a best available;
- (3) Advises a client not to select a best available insurer from among multiple insurers suggested to the client;
- (4) Fails to take reasonable measures to obtain a quote from an insurer that might be a best available insurer.

As many of you know, last year New York Attorney General Eliot Spitzer accused the world's largest insurance broker of steering clients to major insurance companies that had paid it large "contingent commissions." He is pursuing civil and criminal actions in his investigation of the insurance industry, and three executives have already pleaded guilty to charges in the case.

Under Commissioner Garamendi's proposed regulations, failure to comply could result in fines of up to \$10,000 per incident, issuance of a cease and desist order by the Commissioner, and/or the revocation or suspension of a company or broker's license.

If you have read this far, I want to thank you for hearing the "pitch." If you have any questions feel free to contact me directly at Yesowitch@longlevit.com.

Treasurer Report—June 2005 By Mike Diliberto

For the months ending June 2005 we have the following financial results:

Revenues:

<u>Member Dues</u>	<u>\$1,780</u>
<u>Member Events</u>	<u>\$775</u>
<u>Total Revenue</u>	<u>\$2,555</u>

Expenses:

<u>Member Events</u>	<u>\$1,325</u>
<u>Insurance</u>	<u>\$420</u>
<u>Website</u>	<u>\$167</u>
<u>Other</u>	<u>\$132</u>
<u>Total Expenses</u>	<u>\$2,044</u>
<u>Net Income</u>	<u>\$511</u>

A Street Car Named “Desire” Adventure By Maxine Anderson

On May 19, 2005, PCAP hosted an exciting presentation by Maxine Anderson, of the San Francisco City Attorney’s Office, and then took a tour on board the historic streetcar named “Desire.” The venerable and “antique” streetcar behaved admirably until it reached the far-end of the City, where it decided to take a “break.” With transfer tickets in hand, however, everyone was able to make it back to their destinations—sometimes it’s good to “rely on the kindness of strangers.” Ms. Anderson was kind enough to contribute the following article on the City’s claims handling department.



All aboard

The San Francisco City Attorney’s Office is comprised of 333 employees including 200 attorneys. The Office handles approximately 7500 actions annually ranging the gamut from personal injury and property damage to workers compensation. The City Attorney’s Office not only defends the City but also initiates litigation on behalf of the City such as the tobacco industry, Bank of America and Old Republic Title cases.

On average the City receives 4000

claims annually. Approximately 2000 of the claims involve the Municipal Railway System. Of the claims filed approximately 15-20% have to be litigated.

For some perspective, it is helpful to know that Muni, with a 46.7 square mile service area and 978 vehicles (diesel buses, trolley coaches, metro and historic streetcars and cable cars) has a weekday ridership of 737,287 and a yearly ridership of 233,015,740. And, for those trivia buffs out there, the most traveled line in the City is the 38/38L Geary line with 50,893 weekday boardings.

The Claims Division handles almost all of the claims filed against the City, with the exception of claims involving the airport, the Port of San Francisco, the housing authority, the Unified School District or the Redevelopment Agency. The Adjusters and Investigators that make up this Division review, investigate and determine the City’s exposure in a given case, just as their counterparts do in private industry. For the claims that have gone into litigation, the Claims Division continues to work with the Deputy City Attorneys during the discovery phase. And, for those claims that go to Small Claims Court, it appears as the City’s representative. The Claims Division also acts as the subrogation department for the City collecting monies due as a result of damage to City property.

When making a claim it is important to be cognizant of when a claim must be filed, the manner in which it must be filed, the time lines for filing the action and what recourse is available in the event the claim is denied. This and other information regarding claims against public enti-

ties can be found in the California Government Code, Part 3, beginning with Section 900.



Finally, if it becomes necessary to file a claim against the City and County, a claim form can be secured by contacting the City Attorney’s Office at 415-554-3900, or going to the City’s website, at www.SFGOV.org to download one.



City tour

Future Meetings

The PCAP Annual Giants Baseball Night is set for August 2, 2005. The event will begin at 5:30 pm with a buffet dinner in the Club Level at SBC Park. Raffles for prizes will follow. The game will start at 7:15 pm. Reservations are a must; prices per person are \$45 (members) \$55 (non members), all inclusive. To order tickets call Mike Diliberto or Adam Rinder at 415-956-8323.

The event is sponsored by RGL, MKA Inc., Matson Driscoll & Damico, V & M Restoration, Inc., Long & Levit, Greer and Kirby, Co., Inc., and Lewis, Brisbois, Bisgaard & Smith LLP.



Also, please mark you calendar for the next informative PCAP luncheon scheduled for Wednesday, October 5, 2005 at the Oakland Port Authority Building. Stay tuned for details.

René I. Gamboa, Esq.

Vice President

Property Claims Association of the Pacific

Rudloff Wood & Barrows LLP

2000 Powell Street, Suite 900

Emeryville, CA 94608

PCAP is celebrating its 60th year in 2005, making it one of the oldest property claims associations in the San Francisco Bay Area.

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.

If you would like to join PCAP, please go to our website at www.propertyclaimsassociation.org, or contact Mike Diliberto at mdiliberto@us.rgl.com. If you have questions about this or past PCAP newsletters, please contact René Gamboa at rgamboa@rwblaw.com.

