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[www.propertyclaimsassociation.org](http://www.propertyclaimsassociation.org)

## KATRINA UPDATE—FLOOD MEANS FLOOD

On August 6, 2007 the Fifth Circuit Court of Appeals in New Orleans [Maria Arias-Benn v State Farm, No. 06-30771 and related cases] decided that flood exclusions in homeowner, renters and commercial policies were valid and unambiguously excluded Katrina damages even if flooding resulted from negligent design or construction or maintenance of levees.

The court rejected contentions that 'flood' is ambiguous because it could mean floods resulting from natural causes or from negligent acts. The court rejected contentions that if the insurance policy did not define a term that made it ambiguous. The court rejected contentions that if the insurers wanted to exclude floods caused by negligence the policy could have stated that in

plain language. The court rejected contentions that if other insurer's policies defined 'flood' that an insurer that didn't necessarily had an ambiguous policy. The court looked to a dictionary for the meaning of flood, such as 'a rising and overflowing of a body of water that covers land not usually under water'. The court noted that a levee itself is a flood-control measure and whenever a levee fails to hold back floodwaters, the result is a flood. That a levee's failure is due to its negligent design or whatever does not change the character of the water escaping through the breach...the waters are floodwaters and the result is a flood.

The court did not address whether insurers could contract around the

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## President's Message

If you missed it—too bad! We had another excellent presentation at our August luncheon by Nancy Bellard, Risk Manager for the City of San Francisco and Mark Finn, Conservator for the Asian Art Museum. A great program was followed by a self guided tour of the museum.

That brings me to the subject of this message: Continuing Education and the value of being a member of this association. There are two articles in the August edition of Claims Magazine and Claims Education Magazine that point out the need in the industry to promote and recognize the value of CE. Carl Van and the International Insurance Institute just concluded a conference in South Carolina and offer another next year in San Diego. We all know the PLRB and the effort it expends in providing educational seminars. The cost to participate in these well attended

conferences is significant.

Locally we have Claims Conference of Northern California providing programs and a trade show each year for the industry with CE credit offered for RPA, CPCU and MCLE. Having been a part of the conference for the last 5 years, I can attest to the CE value offered.

And here we are, Property Claims Association of the Pacific, providing 9 to 10 hours of CE credit a year and a lunch to boot; all for a \$35 membership. What a deal! I encourage you to help us get the message out to potential members that we offer speakers and programs topical in nature to our business at a heck of a price and with great benefit. Hope to see you in October.

Bob Fox

## KATRINA UPDATE—FLOOD MEANS FLOOD

efficient-proximate cause rule such as we have in California and, citing California law, the court here noted that there are not two independent causes of the damages at issue...the only force that damaged plaintiffs' properties was flood. Negligence did not act, apart

from flood, to bring about the damages and efficient-proximate cause had no application under the circumstances.

The Louisiana cases will be important considerations when next our California courts have to consider the flooding-negligent design-wind-water issues particularly where, as here, the Louisiana federal court referenced California law. Whether the losing plaintiffs will seek further appeal of the issues is unknown.

### Greg Tolson

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## Treasurer's Report

We are approaching the end of the year and thank you to all of our members for supporting PCAP. The annual dues of \$35 is effectively returned to you in free or discounted lunch programs. Our final lunch program is in October 2007 at Chubb's regional offices in Pleasanton, CA. We have now been asking for all lunch meeting reservations to be confirmed with a payment before the event so we do not incur the cost of food for "no-shows". This will help us control the cost of the programs and provide the best value to members.

Annual dues are collected at the beginning of the year and I will be sending out dues notices in January 2008. The earlier you renew your membership or become a new member the quicker you recoup your costs with free or discounted lunch meetings. We already have several excellent meetings planned for 2008, so please renew your membership or join PCAP early in 2008.

**Michael Diliberto, CPA**  
RGL Accountants  
(415) 956-8323

## 2008 Programs Announced

### January 17, 2008-----Law Review

*What cases and legislation in 2007 that affect the P & C industry and you!*

Speakers: Jay Pardini of Lewis Brisbois Bisgaard & Smith and Irene Yesowitch of Long & Levit

Time: Noon to 2:30 PM

Where: Arthur J. Gallagher & Co.,  
One Market St., Spear Tower, San  
Francisco

Third floor meeting room

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### March 20, 2008----- Earthquake

*Everything you wanted to know about the policy but were afraid to ask!*

Speaker: Dan Dyce, Earthquake  
Response Manager for California  
Earthquake Authority

Time: Noon to 2 PM

Where: Arthur J. Gallagher & Co.,  
One Market St., Spear Tower, San  
Francisco

Third floor meeting room

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## Next Meeting

Friday October 18, 2007

### "How to Cope With Appraisal For Best Results"

at

**Chubb Insurance**

**5050 Hopyard Rd # 400, Pleasanton**

**12:00 Noon to 2:00 pm**

We will be serving a light lunch during the meeting. The lunch is free to members and a \$10.00 charge will be assessed non-members.

**Reservations are a must.** Space is limited.

Please RSVP for you and your guests to Mike Diliberto -

RGL Accountants at 415/956-8323 or email reply to

[mdiliberto@us.rgl.com](mailto:mdiliberto@us.rgl.com) by Tuesday, October 15, 2007.

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## Upcoming Events

Legal Review – January 2008

Earthquake—March 2008

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

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