

# RIVERSIDE LAWYER

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MAGAZINE

## In This Issue

- Does Boyd Suggest: Consider the Wrong Thing?  
Occurrence and Claims-Made Policies of Insurance**
- Insurance Bad Faith: The Past, Present  
and Unpredictable Future?**
- Shake, Rattle, and Roll: Are You Covered?**
- Liability Coverage Policies: Property of the Estate to Which the Automatic Stay Applies**
- The Benefits of Employment Practices Liability Insurance**
- CIGA: Covering Claims When an Insurance Company Becomes Insolvent**
- Life and the Fallacy of Insurance**







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# RIVERSIDE LAWYER

MAGAZINE

## C O N T E N T S

## Columns:

- 3 ..... **President's Message** by Jean-Simon Serrano  
 6 ..... **Barristers President's Message** by Erica M. Alfaro

## COVER STORIES:

- 8 ..... **Does *Boyd* Suggest: Consider the Wrong Thing?**  
 by Boyd Jensen  
 9 ..... **Occurrence and Claims-Made Policies of Insurance**  
 by DW Duke  
 10 ..... **Insurance Bad Faith: The Past, Present  
 and Unpredictable Future?**  
 by Wylie A. Aitken & Megan G. Demshki  
 13 ..... **Shake, Rattle, and Roll: Are You Covered?**  
 by Brad Skala  
 14 ..... **Liability Coverage Policies: Property of the Estate  
 to Which the Automatic Stay Applies**  
 by Cathy Ta  
 15 ..... **The Benefits of Employment Practices Liability Insurance**  
 by Jamie E. Wrage  
 20 ..... **CIGA: Covering Claims When an Insurance Company  
 Becomes Insolvent**  
 by Marlene L. Allen  
 22 ..... **Life and the Fallacy of Insurance**  
 by Juanita E. Mantz

## Features:

- 16 ..... **In Memoriam: Hon. E. Michael Kaiser**  
 by Judge Gloria Trask and Gerry Shoaf  
 18 ..... **Stringfellow Memories**  
 by Douglas E. Welebir  
 23 ..... **Opposing Counsel: David D. Werner**  
 by Stefanie G. Field  
 24 ..... **Nominees for RCBA Board of Directors, 2017-2018**

## Departments:

Calendar ..... 2  
 Classified Ads ..... 28

Membership ..... 22

# MISSION STATEMENT

## Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

## RCBA Mission Statement

The mission of the Riverside County Bar Association is:  
To serve our members, our communities, and our legal system.

## Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, and the RCBA - Riverside Superior Court New Attorney Academy.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of *Riverside Lawyer* published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication, and timely business matters.

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

*The Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6<sup>th</sup> day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$25.00 and single copies are \$3.50.*

*Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in the Riverside Lawyer.*

*The material printed in the Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.*

# CALENDAR

## MAY

- 9 Riverside County Bar Foundation Inaugural Fundraiser**  
5:30 PM – 8:30 PM  
Benedict Castle  
5445 Chicago Avenue, Riverside  
See RCBA website for information (riversidecountybar.com)
- 10 Criminal Law Section**  
Noon – 1:15 p.m.  
RCBA Gabbert Gallery  
Speaker: Judge Jackson Lucky  
Topic: “I’ve Been Right Here – Non-Statutory Speedy Trial Motions”  
MCLE
- 12 General Membership Meeting**  
Noon – 1:15 p.m.  
RCBA Gabbert Gallery  
Program to be announced  
New Attorney Academy Graduation
- 16 Family Law Section Meeting**  
Noon – 1:15 p.m.  
RCBA Gabbert Gallery  
Speaker: Marc Kaplan  
Topic: “Discovery: Financial Documents – Games People Play”  
MCLE
- Family Law Mixer**  
5:30 – 7:00 p.m.  
The Brickwood  
3653 Main Street, Riverside
- 17 Estate Planning, Probate & Elder Law Section**  
Noon – 1:15 p.m.  
RCBA Gabbert Gallery  
Program to be announced
- Judicial Reception**  
Hosted by the Barristers  
5:30 PM – 7:30 PM  
Riverside City Hall, 3900 Main Street  
Grier Pavilion, Rooftop (7th Floor)  
RSVP by May 15 at Eventbrite website:  
<http://rcbambarristers.eventbrite.com/>
- 29 Memorial Day Holiday**  
RCBA Offices Closed

*For the latest calendar information please visit the RCBA's website at [riversidecountybar.com](http://riversidecountybar.com).*







# President's Message

by Jean-Simon Serrano

As a plaintiff's personal injury attorney, two frustrating circumstances arise with regularity.

## Civil Code Section 3333.4 ("Prop 213")

"True I didn't have insurance, but I didn't cause the accident, why does that matter?" It matters because of Proposition 213. This section states, in part:

"...in any action to recover damages arising out of the operation or use of a motor vehicle, **a person shall not recover non-economic losses** to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages if... **the injured person** was the owner of a vehicle involved in the accident and the vehicle **was not insured.**" (Civil Code section 3333.4, emphasis added.)

A third-party caused the accident but, because you were not insured, you may not recover for pain, suffering, physical impairment, and/or disfigurement. Even if you are hideously scarred or missing a limb, you will not be compensated for the scarring, disfigurement, or physical impairment. This limitation also makes these types of cases impractical for contingent fee representation, and it may be difficult to find an attorney that can handle your case.

In practice, Proposition 213 can have very harsh effects. Thankfully, there are certain exceptions to Proposition 213. If the culpable party is convicted of driving while under the influence, Proposition 213 does not apply.

(Civ. Code section 3333.4, subd. (c).) This is the only exception specifically provided for in the language of the statute. Other exceptions, however, have been developing over the years through case law.

One such exception deals with those driving company vehicles in a worker's compensation setting. In *Montes v. Gibbens* (1999) 71 Cal. App.4th 982, the court held that Civil Code section 3333.4 does not apply to an employee driving the employer's motor vehicle at the time of an accident. Thus, the plaintiff in *Montes* was not precluded from recovering for his pain and suffering, despite the lack of personal insurance on the company vehicle he was driving at the time of the accident.

Another exception was created in *Hodges v. Superior Court* (1999) 21 Cal.4th 109, where the Supreme Court of California held that Civil Code section 3333.4 did not apply where the injuries were caused by a manufacturing defect of the vehicle. In *Hodges*, the uninsured plaintiff's gas tank ruptured when he was rear-ended.

Another exception was found in *Ieremia v. Hilmar Unified School Dist.* (2008) 166 Cal.App.4th 324. There, the Court of Appeal for the Second District held that Proposition 213 did not apply to a wife who was legally the owner of a vehicle when she did not have actual or constructive knowledge of the ownership. In *Ieremia*, the uninsured motorist was driving a car which, unbeknownst to her, had been purchased by her husband days before the accident. The court concluded that, as a matter of law, the plaintiff was not an "owner" of the uninsured vehicle for purposes of Civil Code section 3333.4, and thus that the plaintiff was entitled to recover noneconomic damages such as pain and suffering.

Ultimately, make sure your insurance does not lapse and that you are insured every time you are driving your vehicle. California law provides harsh punishments to uninsured motorists harmed through no fault of their own.

## Uninsured/Underinsured Motorist Coverage

The second scenario that I see repeated all too often is as follows: "What do you mean the other driver only has \$15,000.00 of insurance!? That doesn't even cover my medical bills."



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The minimum insurance required by California law is a policy that is \$15,000.00 per person or \$30,000.00 per occurrence. I've had countless cases with medical bills well into the hundreds of thousands, permanent physical impairment, and the culpable party carries the minimum \$15,000/\$30,000 insurance policy. Understandably, my clients do not want to accept \$15,000.00 for their loss but, often, it is the best practical choice. This is because the culpable party is often judgment-proof (i.e. no assets and can simply bankrupt an excess judgment against them). If they *do* accept the \$15,000.00 policy, it is a long process of negotiating medical bills often to have the injured party left with little to nothing. This can all be avoided! Insurance Code 11580.2 requires all policies sold in California to have uninsured/underinsured motorist coverage *unless explicitly waived* by the person buying the insurance. Do not waive this to save yourself a few dollars.

Uninsured motorist coverage is self-explanatory – it provides you with coverage if the culpable party does not have insurance. Underinsured motorist coverage is a bit more complicated.

Returning to the scenario described earlier, with the culpable party having only \$15,000 coverage. This is where underinsured motorist coverage can help you. You're a

responsible person, you carry more than \$15,000.00 of insurance and you have underinsured motorist coverage that matches your liability coverage. Assuming you have \$100,000.00 underinsured motorist coverage, you have insured yourself for up to \$100,000.00 regardless of whether the culpable party has no insurance, \$15,000.00, or any other amount less than \$100,000.00. Assuming your damages warrant it, you collect the \$15,000.00 from the culpable party, and then you have up to an additional \$85,000.00 of underinsured motorist coverage to compensate you for your injuries. You need not be constrained by the amount of coverage held by the other party. When you have underinsured motorist coverage, you can pick what the limit will be if you are injured in an accident by a third party – regardless of how much insurance they carry.

To recap: (1) Make sure you are always insured; and (2) Do not be at the mercy of the culpable party's insurance limit – make sure you have underinsured motorist coverage and that it is for an amount that will compensate you in the event of a catastrophic injury.

*Jean-Simon Serrano is an associate attorney with the law firm of Heiting & Irwin.*



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# BARRISTERS PRESIDENT'S MESSAGE

by Erica M. Alfaro



## Board Member Q&A: Shumika T. R. Sookdeo

Shumika is a member-at-large on the Barristers board and grew up in Riverside. Shumika graduated from the University of California, Santa Barbara with a degree in English. She earned her Juris Doctorate from Barry University School of Law, in Orlando, Florida. While attending law school, Shumika competed on a mock trial team. She also had a summer internship

with the Orange County Public Defender's Office in Orlando, Florida.

Shumika is currently managing attorney at Robinson Sookdeo Law, a general practice law office that handles family law, criminal law, bankruptcy law, and eviction cases. The office is located in Riverside because it enables Shumika to serve members of a community where she was raised. Prior to being admitted to the California Bar, she volunteered as a law clerk with the Law Offices of the Public Defender in Riverside. Currently, Shumika is licensed to practice law in California and Florida.

Shumika was recently appointed as Commissioner of the California Commission on Access to Justice. She is the Immediate Past President of the Richard T. Fields Bar Association. She currently serves on the California Association of Black Lawyers Board.

Shumika enjoys practicing law in the Inland Empire because she enjoys the sense of community and camaraderie among her colleagues. She finds that Inland Empire attorneys tend to work collaboratively to resolve legal matters.

She is an avid volunteer for various organizations and clinics that assist students, low income families, and troubled youth throughout the Inland Empire and in the Los Angeles area. Shumika has been a volunteer attorney at the Harriett Buhai Center for Family Law, located in Los Angeles since 2012. She has also been a volunteer Education Representative with the Riverside County Bar Association's Project Graduate Program, mentoring foster youth since 2013.

Shumika enjoys being a Barristers Board Member because she likes planning events for her peers. She finds it refreshing to spend time with younger and newer attorneys that can relate to the specific issues and perspectives she has about life and the practice of law. She also loves that Barristers plans events that serves the Riverside community, as well as



Shumika T. R. Sookdeo  
photo courtesy of Sandra B. Norman

exciting events that allow young lawyers to relax and enjoy each other's company.

In her spare time, Shumika enjoys working out with her husband, quality time with family, volunteering in the community and masquerading for carnival.

## Upcoming Barrister Event: Judicial Reception

Barristers is proud to announce that we will be holding our First Annual Judicial Reception on May 17, 2017, from 5:30 p.m. - 7:30 p.m. at Grier Pavilion located at Riverside City Hall.

Come admire a beautiful view of the Riverside skyline while enjoying appetizers and refreshments. Network with the Riverside legal community and gain insight from our judicial panelists. Barristers' alumni are encouraged to attend and socialize with past and current members.

Free for judicial officers, invited special guests, and RCBA members. Cost is \$20 for non-RCBA members. RSVP by 5:00 p.m., May 15, 2017 at <https://rcbabarristers.eventbrite.com>. Space is limited. RSVP required to attend. Please direct any questions to Erica Alfaro at [erialfaro@gmail.com](mailto:erialfaro@gmail.com).

Barristers appreciates the support of our sponsors that made this reception possible:

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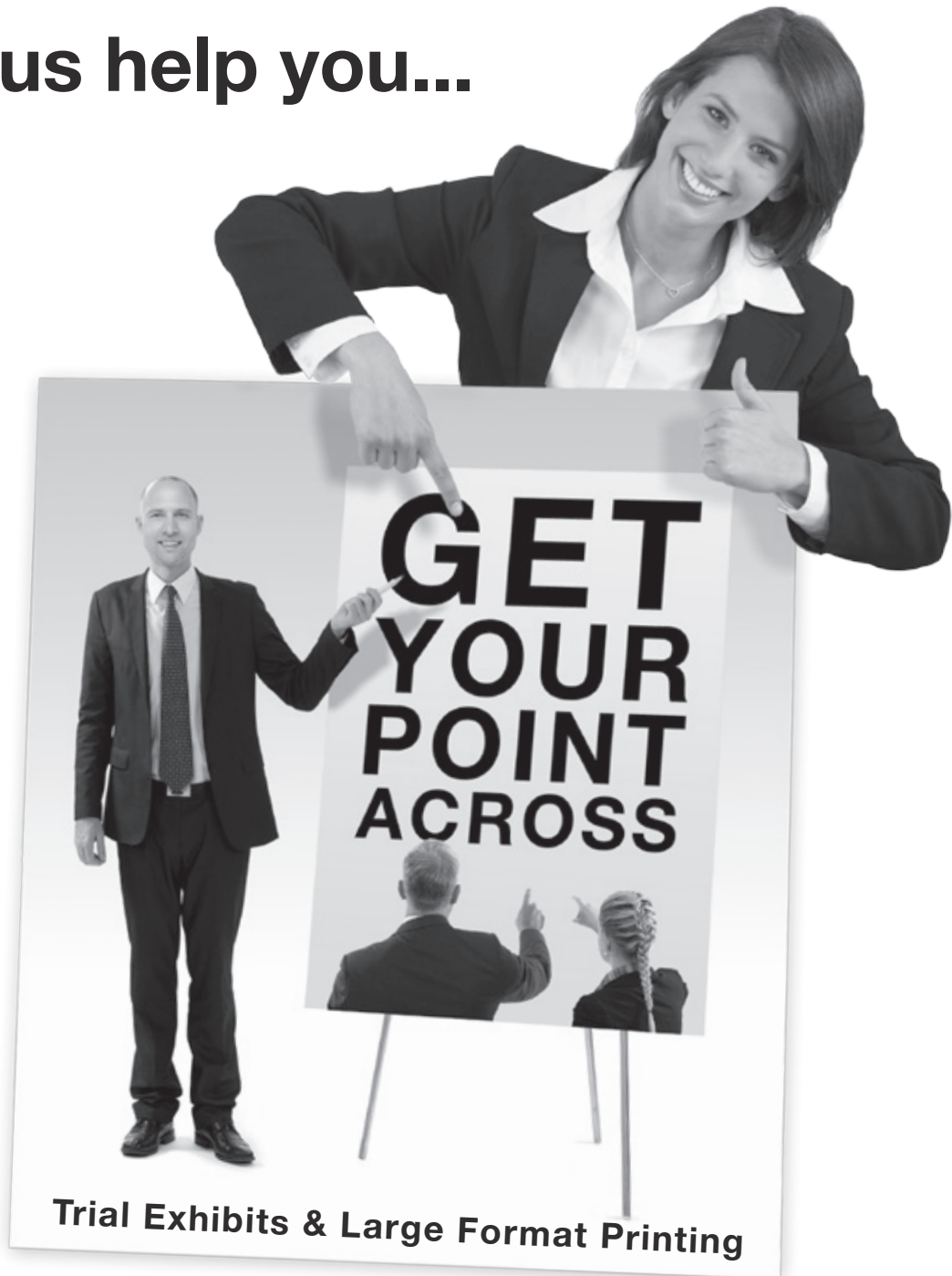
Erica Alfaro currently works at State Fund.





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# DOES *BOYD*<sup>1</sup> SUGGEST: CONSIDER THE WRONG THING?

by Boyd Jensen

Deborah Boyd did the right thing. When confronted with the sudden left turning vehicle in front of her in Whittier, California, she reacted instinctively and responsibly. To avoid striking the late model car, she sharply swerved. However in swerving she lost control, struck a parked car, bringing her car to a rest in a storefront on the east side of the street. What happened was substantiated by three witnesses and confirmed by the police in their report. Unfortunately, Debra suffered personal injuries, while the negligent driver continued on their way never to be identified.

In the months that followed Debra again choose wisely, asking attorney Clinton Holland of La Habra, California to represent her. In compliance with the California Insurance Code Section 11580.2 and as authorized by her policy of insurance with the InterInsurance Exchange of the Automobile Club of Southern California, both related to claims involving the “uninsured or underinsured,” (Ins. Code, Section 11580.2 (b)) she notified the police and reported her incident within a reasonable time, demanding arbitration for personal injury compensation. She had been injured. She had put herself at risk, and had she not avoided the impending collision, others could have been injured. She had paid her premium, the police report was in her favor, confirmed by independent witnesses, but the law was not on her side.

Insurance Code Section 11580.2 (b) states “with respect to an ‘uninsured vehicle’ whose owner or operator is unknown: (1) The bodily injury (must arise) out of **physical contact** of the automobile with the insured or with the automobile that the insured is occupying.” (Emphasis added.)

The arbitrator ruled in favor of the Automobile Club, enforcing the physical contact requirement. The law was clear, but the result did not seem fair to her counsel, who in the highest purpose of our profession, challenged the law by petition to the Los Angeles Superior Court. He argued to strike the award using the doctrine of equity, and reasoned that the court in *InterInsurance Exchange of the Automobile Club of Southern Calif. v. Lopez* (1965) 238 Cal.App.2d 441, 446, extended liability to **indirect physical contact**. A hit-and-run driver (uninsured motorist) struck the second vehicle, propelling it into the third “insured” vehicle, causing the collision: “[W]here an unknown vehicle has struck a second vehicle and caused it to strike the insured vehicle, there is physical contact between the unknown vehicle and the insured vehicle within the meaning of the uninsured motorist endorsement.”

1 “Boyd” refers to the case *Boyd v. Interinsurance Exchange* (1982) 136 Cal.App.3d 761, 764, and not the author who was defense counsel.

Though unsuccessful, Debra Boyd and her attorney appealed the case to the Second District Appellate Court in Los Angeles. The accident occurred October 10, 1979. The appellate court’s decision was dated October 20, 1982 in *Boyd v. Interinsurance Exchange* (1982) 136 Cal.App.3d 761.

“To avoid fraudulent claims of persons who hit an obstruction but allege that they were forced to swerve to avoid an unidentified uninsured car, the uninsured motorist statute requires that when the owner or operator of an uninsured motor vehicle is unknown, the bodily injury must have ‘arisen out of physical contact...’ There are no exceptions to the physical contact requirement; it is immaterial that the insured’s claim is clearly not fraudulent.” (*Orpustan v. State Farm Mut. Auto. Ins. Co.* (1972) 7 Cal.3d 988, 994.)

Although criticized and not followed in the state of Connecticut, the Boyd case remains black letter law in California, but not without further tests. In *Krych v. Mercury Casualty Company* (1971) 16 Cal.App.3d 875, 879 plaintiff sought to satisfy the “physical contact” requirement with headlight emissions. Light is material and therefore physical. However, the court clarified “physical contact,” among other things, required “a meeting of three-dimensional masses... weight, density and bulk. . . .”; *Barnes v. Nationwide Mutual Insurance Company* (1986) 186 Cal.App.3d 541 where boxes of chairs lying on the freeway left by an “uninsured” or unknown vehicle was not indirect physical contact; *State Farm Mutual Automobile Insurance Company v. Yang* (1995) 35 Cal.App.4th 563 involving a pedestrian standing in a parking lot, when shot by a passenger in an automobile; but in *Pham v. Allstate Insurance Company* (1988) 206 Cal. App.3d 1193 a rock striking a windshield qualified.

Would Debra Boyd have reconsidered her evasive action? The impact to her would have been frontal. No one supports the escaping tortfeasor. Or simply hard cases make bad law. “...it is a maxim which is quite misleading. ... (Does it come) to this: ‘Unjust decisions make good law’... If the law should be in danger of doing injustice, then equity should be called in to remedy it.” (*White v. Vandervell Trustees Ltd.* (No. 2) 1974 EWCA Civil 7 Chapter 269.)

As defense counsel looking back, the legislature, arbitrator, and courts did the right thing. The policy which fostered the law was valid and justice was satisfied precisely because parties and professionals are willing to devote years of advocacy.

*Boyd Jensen, a member of the Bar Publications Committee, is with the firm of Garrett & Jensen in Riverside.*



2 Witkin, *Summary Of California Law* 10th Edition, Insurance Section 198 (2005) - June 2016 Update



# OCCURRENCE AND CLAIMS-MADE POLICIES OF INSURANCE

by DW Duke

One of the common pitfalls of insureds in matters involving professional liability, is in failing to understand the difference between “occurrence” and “claims-made” policies of insurance. There are three general types of liability insurance policies: “occurrence,” “claims made” and “claims made and reported.” These policies contain several differences one of the most significant of which is the time at which coverage under the policy is triggered.

## Occurrence Policies:

Traditionally most insurance policies were occurrence policies. These policies provide coverage for wrongful acts, offenses, injuries or damages that occur during the policy period, regardless of when the claim is made. Common examples of an occurrence policy would be automobile insurance policies and homeowner insurance policies. The triggering event in this type of policy is the occurrence. Under a true occurrence policy, there would be coverage if the event occurred within the policy period even if the claim was not made until many years later. This type of policy has a greater likelihood of liability for the insurer since the only requirement is that the triggering event occur during the policy period.

## Claims-Made Policies:

A claims-made policy differs from an occurrence policy in that the claim must be made by the third party to the insured during the policy period for the claim to be covered. The claims-made policy was developed to allow insurers to establish reserves based on the coverage of a policy at the time a claim was submitted, without regard to the time of the damage or injury, thus allowing the insurer to establish reserves without concerns over the possibility of inflation or escalating jury verdicts. The greater the certainty of an insurer in assessing anticipated claims, the more certain the reserves and the premiums. These types of policies are most common in professional liability policies.

Unless a policy contains an exclusion of occurrences prior to the inception of the policy period, the claims-made policy provides coverage for injuries occurring prior to the policy period and thus, provides retroactive coverage. Under a claims-made policy, the

insurer agrees to assume liability of acts or omissions occurring even prior to the inception of the policy if the claim is made during the policy period. (See *Taub v. First State Insurance Co.* (1995) 44 Cal.App.4th 811, 817, 52 Cal.Rptr.2d 1, 4, fn. 4.) Some claims-made policies exclude acts that occur prior to the inception of the policy. Such exclusions will be enforced provided they are clear and conspicuous. (See *Merrill & Seeley, Inc. v. Admiral Insurance Co.* (1990) 225 Cal.App.3d 624, 629, 275 Cal.Rptr. 280, 283.)

## Claims-Made and Reported Policies:

Claims-made and reported policies require not only that the claim be made to the insured within the policy period, but that it is reported to the insurer within the policy period or within a designated time after the expiration of the policy. Under this type of policy, unless notice is provided to the insurer during the policy period, there is no coverage, even if the claim is actually made to the insured during the policy period. Under a claims-made and reported policy the claim must be reported to the insurer within the policy period. It does not matter that the claim is first made to the insured at the last minute, if the insured does not report it to the insurer within the policy period there is no coverage. (*Pacific Employers Ins. Co. v. Superior Court* (1990) 221 Cal.App.3d 1348, 1359, 270 Cal.Rptr. 779, 784; but see *Root v. American Equity Speciality Ins. Co.* (2005) 130 Cal.App.4th 926, 30 Cal.Rptr.3d 631 [attorney excused for failing to report malpractice claim against him within policy period].)

Understanding the differences between occurrence and claims-made policies can be important both when acquiring a policy of insurance and in knowing when and where to submit a claim. The failure to properly tender a claim can result in a denial of coverage. When advising a client about different types of coverages it is important to have a thorough working knowledge of the different types of policies and what policy applies in a given situation.

*DW Duke is the managing partner of the Inland Empire office of Spile, Leff & Goor, LLP and the principal of the Law Offices of DW Duke.*



# INSURANCE BAD FAITH: THE PAST, PRESENT AND UNPREDICTABLE FUTURE?

by Wylie A. Aitken & Megan G. Demshki

Over the last several decades California has been at the forefront of protecting consumers through insurance bad faith law. However, recent case law developments have generated confusion over when the insurer has a duty to proactively effectuate a settlement, or at least “seize” an opportunity to settle to protect their insured. The recent case of *Reid v. Mercury Insurance Co.* 220 Cal.App.4th 262, 278-9 (2013), raises interesting questions of when, if at all, a carrier must take affirmative action to protect an insured.

To understand the public policy of breach of the “implied covenant of good faith and fair dealing” (i.e. bad faith) it is helpful to give a historical perspective.

Until the 1950s, there was a clear distinction between the remedies for a breach of contractual duty and the remedies for the breach of duty found in tort law.<sup>1</sup> During this time, an insurer’s refusal to pay a claim was treated as a breach of contract.<sup>2</sup> In this environment, insureds were left without adequate protections from insurance companies and without any extra contractual remedies and were often coerced into accepting lower amounts than were even provided for in the insurance policy.<sup>3</sup>

Sensing the clear inadequacy of contractual remedies, courts began to treat insurer’s unfair claims practices as a tort.<sup>4</sup> The courts turned to the implied covenant of good faith and fair dealing that is present in all contracts.<sup>5</sup> By breaking away from purely contractual liability, insureds and consumers had access to greater recovery.<sup>6</sup> With this new playing field, insurers could no longer bully the insured without consequence.<sup>7</sup>

Today, insurance companies still owe a duty of good faith and fair dealing to the people they insure that cannot be contracted out of the relationship.<sup>8</sup> When insurance

companies fail to uphold that duty, they have committed insurance bad faith.<sup>9</sup> Insurance bad faith law is state-specific and can apply to any type of insurance policy regardless of whether it is a first party or third party claim by the implied covenant of good faith and fair dealing contained by law in insurance contracts.<sup>10</sup> A third-party bad faith claim generally arises when a third-party asserts a claim against the insured and the insured is exposed to damages exceeding the policy limits of the insurance policy due to the insurer’s failure to settle within the policy limits. A first-party bad faith claim generally arises when the insurer fails to pay an insured’s claim without a reasonable basis or fails to properly investigate the claim in a timely manner, causing a delay in payment.

In one of the most pivotal insurance bad faith California Supreme Court cases, *Comunale*, the Court held:

“When there is a great risk of a recovery beyond the policy limits so that the most *reasonable* manner of disposing of the claim is a settlement, which can be made within those limits, a *consideration in good faith* of the insured’s interest requires the insurer to settle the claim. Its unwarranted refusal to do so constitutes a breach of the implied covenant of good faith and fair dealing.”<sup>11</sup>

In 1972, California adopted the Unfair Claims Practices Act.<sup>12</sup> Initially, the California Supreme Court held that a private right of action existed under the Unfair Claims Practices Act for both first and third party claims.<sup>13</sup> Then the California Supreme Court reversed the decision for first and third party claims.<sup>14</sup> After the California Supreme Court disavowed a private cause of action against under the Unfair Claims Practices Act, California voters passed

1 John K. DiMugno & Paul E.B. Glad, *California Insurance Law Handbook 231* (2011).

2 *Id.*

3 *Id.* See *20th Century Ins. Co. v. Sup. Ct.* (2001) 90 Cal.App.4th 1247, 1265-6 (explaining the significant policy considerations in protecting the insured through tort law).

4 *Id.*

5 *Id.* See *Wilson v. 21st Century Ins. Co.* (2007) 42 C4th 713, 720.

6 *Id.* See *Crisci v. Security Ins. Co. of New Haven, Conn.*, (1967) 66 Cal. 2d 425, 432-3.

7 *Id.*

8 Justice H. Walter Croskey & Justice Marcus M. Kaufman, *California Practice Guide Insurance Litigation 12A-1* (2013).

9 Croskey at 12A-1-3. See *Waller v. Truck Ins. Exch., Inc.* (1995) 11 C4th 1, 36; *Gruenberg v. Aetna Ins. Co.* (1973) 9 C3d 566, 573.

10 DiMugno at 231. In reality, they are all first party claims since a third-party claim exists only upon an assignment of the first party.

11 *Comunale v. Traders & General Ins. Co.* (1958). 50 Cal. 2d 654, 659 (emphasis added).

12 DiMugno at 544-9.

13 *Royal Globe Ins. Co. v. Superior Court*, 23 Cal. 3d 880 (1979).

14 See *Moradi-Shalal v. Fireman’s Fund Ins. Cos.*, 46 Cal.3d 287 (1988) (discussing third party claims); *Zephyr Park v. Superior Court*, 213 Cal.App.3d 833 (1989) (discussing first party claims).



Proposition 103 in the November 1988 election.<sup>15</sup> This presently is Section 790.03(h) of the California Insurance Code.<sup>16</sup> This section now lists sixteen unfair and deceptive acts or practices that can constitute bad faith.<sup>17</sup>

As insurance bad faith developed, it became clear that there was no private civil cause of action “against an insurer that commits one of the various acts listed in section 790.03, subdivision (h).”<sup>18</sup> Case law further clarified that violation of the section “may evidence the insurer’s breach of duty to its insured” under the implied covenant of good faith and fair dealing, making it evidentiary important though not an independent cause of action.<sup>19</sup>

In *Crisci v. Security Ins. Co.* of New Haven, Conn., the Court determined that liability based on the implied covenant of good faith and fair dealing “exists whenever the insurer refuses to settle in an appropriate case.”<sup>20</sup> The Court articulated that when “determining whether to settle the insurer must give the interests of the insured at least as much consideration as it gives to its own interests.”<sup>21</sup>

In *Johansen v. California State Auto. Assn. Inter-Ins. Bureau*, the Court held that “[t]he implied covenant of good faith and fair dealing imposes a duty on the insurer to settle a claim against its insured within policy limits whenever there

is a *substantial likelihood* of a recovery in excess of those limits.”<sup>22</sup> The Court went on to explain that “the only permissible consideration in evaluating the reasonableness of the settlement offer becomes whether, in light of the victim’s injuries and the probable liability of the insured, the ultimate judgment is likely to exceed the amount of the settlement offer.”<sup>23</sup>

### **Reid and Boicourt**

In *Boicourt v. Amex Assurance Co.* (2000), a matter handled by our office at both the trial and appellate levels, the Court explained that the “the claimant’s request for the policy limits might have been a settlement opportunity which was arbitrarily foreclosed by the insurer for its own advantages to the insured’s detriment.”<sup>24</sup> The opinion begins with the statement that, “[n]o less an authority on insurance law than John Alan Appleman declared 40 years ago that a liability insurer “is playing with fire” when it refuses to disclose policy limits.”<sup>25</sup> The Court further said, “[w]e therefore conclude that a formal settlement offer is not an absolute prerequisite to a bad faith action in the wake of an excess verdict when the claimant makes a request for policy limits and the insurer refuses to contact the policyholder about the request.”<sup>26</sup> This was an important and significant development.

In *Reid v. Mercury Ins. Co.* (2013), the Court took the position that “an insurer’s duty to settle is not precipitated solely by the likelihood of an excess judgment against the insured.”<sup>27</sup> The Court also noted

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that in the absence of a settlement demand or some other manifestation that the injured party is interested in a settlement, there is no liability for bad faith failure to settle.<sup>28</sup> The Court did not consider asking for the policy limits or the letter of representation citing to Insurance Code section 790.03 enough to constitute a settlement demand.<sup>29</sup> The Court held that “nothing in California law supports the proposition that bad faith liability for failure to settle may attach if an insurer fails to initiate settlement discussions, or offer its policy limits, as soon as an insured’s liability in excess of policy limits has become clear.”<sup>30</sup>

*Reid* has generated some confusion in the legal community regarding exactly what is enough to prove a manifestation of an interest in settlement and what triggers an insurer’s duty to initiate settlement. Practitioners are left to grapple with how *Reid* is consistent with the *Boicourt* decision, which explained:

“All we say now is that the claimant’s request for the policy limits might have been a settlement opportunity which was arbitrarily foreclosed by the insurer for its own advantages to the insured’s detriment.”<sup>31</sup>

28 *Id.*

29 *Id.*

30 *Id.* at 277.

31 *Boicourt v. Amex Assurance Co.*, 78 Cal. App.4th 1390, 1399 (2000).

15 DiMugno at 546.

16 California Insurance Code § 790.03 (2014).

17 *Id.* See also *Ashley* at §§ 2.08 and 2.15 (Since California Prop. 103, nineteen state legislatures have passed legislation specifically authorizing bad faith claims against insurers.)

18 *Moradi-Shalal v. Fireman’s Fund Ins. Companies*, 46 Cal.3d 287 (1988) (304)

19 *Shade Foods v. Innovative Products Sales & Marketing, Ins.*, 78 Cal.App.4th 847 (2000) (916) See *Jordan v. Allstate Insurance Company*, 148 Cal.App.4th 1062 (2007); CACI 2330.

20 *Crisci*, 66 Cal.2d at 430.

21 *Crisci*, 66 Cal.2d at 429.

22 *Johansen v. California State Auto. Assn. Inter-Ins. Bureau*, 15 Cal.3d 9, 14-5 (1975).

23 *Id.* at 16.

24 *Boicourt v. Amex Assurance Co.*, 78 Cal. App.4th 1390, 1398-9 (2000).

25 *Id.* at 1392

26 *Id.* at 1398-9.

27 *Reid v. Mercury Ins. Co.*, 220 Cal.App.4th 262, 278-9 (2013).

The authors believe that to some extent *Reid* misses the point in that it puts too much emphasis on the actions or interest of the claimant/plaintiff and not enough on the duty of a carrier to protect the insured defendant. Since insurance is a promise of “protection” then why not have a duty to act affirmatively to “protect,” rather than take advantage of the whim of a claimant or their attorney? *Reid* also does not emphasize enough that the carrier did take some positive steps which could have been a firmer basis for its opinion.

There is some encouragement in the Court’s recognition that, “there must be, at a minimum, some evidence either that the injured party has communicated to the insurer an interest in settlement, or some other circumstance demonstrating the insurer knew that settlement within the policy limits could feasibly be negotiated.”<sup>32</sup>

In our letters of representation, we include the following language: Furthermore, we hereby request that you contact your insured and seek permission to disclose to us the applicable limits of all liability insurance on behalf of your insured which apply to this incident. If such disclosure is not done in a proper manner, the ability to effectuate a policy limits settlement may be lost. See *Boicourt*

32 *Reid* at 272.

*v. Amex Assurance Company Co.* (2000) 78 Cal.App.4th 1390, 93 Cal.Rptr.2d 763. It is our belief and policy that if such a disclosure is made it could well lead to, and often does result in, a resolution of the matter.

Insurance bad faith law has worked to balance the needs of insurance companies to advocate for their interests with adequate consumer protections for the insured. The historical progression of insurance bad faith as a tort has caused increased security for consumers, while also balancing the needs of the insurance company to run a business, a business which has fiduciary duties beyond a simple contract.

Not discussed in this article is the issue of punitive damages which has also evened the playing field for consumers and which can be saved for another day.

*Wylie A. Aitken is the founding partner of Aitken Aitken Cohn and Megan G. Demshki is a second year associate with the firm. Aitken Aitken Cohn specializes in insurance bad faith and has been lead counsel in three of the leading bad faith appellate cases, including Neal v. State Farm Ins. Cos. 188 Cal.App.2d 690 (1961); Gourley v. State Farm Mut. Auto Ins. Co. 53 Cal.3d 121 (1991); and Boicourt v. Amex Assurance Co., 78 Cal.App.4th 1390 (2000).*



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# SHAKE, RATTLE, AND ROLL: ARE YOU COVERED?

by Brad Skala

Most if not all homeowner insurance companies do not cover for earthquake or earth movement in their policies. However, before 1996, each insurance company would offer an earthquake policy to its policyholders. This all changed.

In 1996, the legislature established the California Earthquake Authority (CEA) to address a home-insurance crisis. (Insurance Code §§ 10089.5 — 10089.54.) The 1994 Northridge earthquake caused huge and unexpected earthquake losses and rattled the insurance industry. In the months following the quake, insurers began refusing to write new California residential policies to avoid also having to offer earthquake insurance under the state's "mandatory earthquake offer" law. Eventually, new home policy sales across almost 95 percent of the market were closed down.

The situation threatened the state's housing market. So in response, the state created CEA, a not-for-profit, privately funded, and publicly managed entity. Participating insurance companies would sell and service CEA earthquake policies, but CEA itself would bear the insurance risk in the event of covered claims. CEA participating insurers began writing CEA policies on Dec. 1, 1996, and over the next year the market crisis dissipated and home insurance sales returned to normal.

Over the next two decades, CEA has been able to create a solution to the home insurance crisis and has worked hard to make earthquake insurance as affordable, valuable and flexible as possible. CEA has accomplished much during this time. Through innovative, cost-saving financing techniques and application of the best available science, CEA has been able to lower its rates by a combined 55 percent. CEA has funded important scientific and engineering research, to help gain a deeper understanding of earthquake risk, and is now offering financial incentives to retrofit older houses.

As recent as 2016, the CEA has rolled out many new policy choices and deductible options, and deeper premium discounts. Earthquake risk is real, but so is the value of earthquake insurance. CEA now offers a policyholder many new options to create the coverage and deductibles they wish to tailor to their needs, risk and budget.

The CEA is committed to getting even more Californians financially protected against damaging earthquakes through education, mitigation and insurance. With more than \$12 billion in claim-paying capacity, CEA could cover all of its claims if the 1906 San Francisco, 1989 Loma Prieta or 1994 Northridge earthquake were to occur today.

According to the U.S. Geological Survey, the likelihood of a 6.7M or larger earthquake in California (the same magnitude as the damaging 1994 Northridge earthquake) is a virtual certainty (99 percent) in the next 30 years, which is the duration of a typical home mortgage. Still fewer than 10% of California homes are covered by earthquake insurance...**ARE YOU?**

I encourage consumers to contact their CEA participating insurance companies or for more information: [www.Earthquakeauthority.com](http://www.Earthquakeauthority.com)

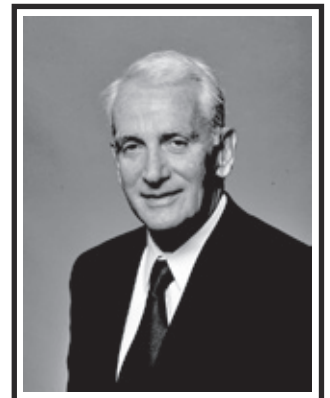
*Brad Skala has been an agent for 18 years with State Farm Insurance Companies and can be reached by calling 800-727-2203.*



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# LIABILITY COVERAGE POLICIES: PROPERTY OF THE ESTATE TO WHICH THE AUTOMATIC STAY APPLIES

by Cathy Ta

When a chapter 7, 11, 12 or 13 case is filed, two key items spring into life. The first is a new entity called the bankruptcy estate which is comprised of all of the debtor's non-exempt legal or equitable interests in property as of the time of the bankruptcy filing, wherever located and by whomever held, plus certain property that the debtor acquires (or becomes entitled to acquire) within 180 days after the case is filed. The idea is that "property of the estate" is broadly defined so as to maximize payment to creditors of the debtor; in exchange, the "honest but unfortunate debtor" will receive a fresh start.

The second item that arises is the automatic stay, which "freezes" the status quo in order to offer the debtor a "breathing spell" from its creditors. Moreover, the automatic stay continues during the pendency of the case (until either relief from the stay is granted or the stay is otherwise discontinued) so that the debtor's property as well as creditor claims against the debtor and/or the debtor's property may be administered in an orderly and equitable process. Similarly to how property of the estate is broadly defined, the scope of the automatic stay is also broadly defined to stay any actions against the debtor that could have been commenced prior to the bankruptcy filing, any actions to enforce a judgment against the debtor or property of the estate, and any actions to possess or control property of the estate. Moreover, the Ninth Circuit has held that any actions taken in violation of the automatic stay are null and void.

These two items come to light in the context of a debtor's rights under an insurance policy. In *The Minoco Group of Cos., Ltd. v. First State Underwriters Agency of New Eng. Reins. Corp.* (*In re The Minoco Group of Cos., Ltd.*), 799 F.2d 517 (Ninth Cir. 1986), First State had issued prepaid excess officers and directors liability policies to the debtor Minoco. The policies provided coverage for claims made from November 1982 through July 1984 and permitted cancellation by either party at any time on 30 days' notice. In November 1983, two months after Minoco filed for chapter 11 bankruptcy, First State gave notice of cancellation. Minoco then sued for declaratory relief that cancellation of the policies was automatically stayed and for injunctive relief to enjoin First State from cancelling the policies.

Under the policies, First State provided coverage with respect to two categories of claims: (1) claims made against officers and directors, which First State would pay on their behalves, except for those claims indemnified by Minoco;

and (2) those claims indemnified by Minoco, which First State would pay on Minoco's behalf.

A three-judge panel of the Ninth Circuit affirmed the bankruptcy court's finding that cancellation of the policies was automatically stayed. It rejected First State's argument that the policies were not property of the estate. Instead, the panel found that unlike First State's characterization that the policies benefited only the officers and directors of Minoco, the policies also benefited Minoco itself in that they insured Minoco against indemnity claims made by officers and directors. Under the simple reasoning that Minoco's estate is worth more with the policies than without them, the panel found the policies constituted property of the estate and therefore the automatic stay applied to protect them from cancellation by First State.

The Ninth Circuit panel also rejected First State's argument that the policies were not really property of the estate. First State asserted that Minoco only held the policies in constructive trust for the potential benefit of claimants who make claims against Minoco's officers and directors. While the panel could see a situation whereby Minoco received insurance proceeds from First State for payment to officers and directors in satisfaction of indemnification claims, such that those proceeds would be held in constructive trust by Minoco, that particular situation was not before the panel. Regardless, the panel noted that coverage policies are not independent contractual obligations running directly to potential claimants; rather, they are direct obligations to the insured. Accordingly, conversely, they carry direct benefits to the insured, here, Minoco as well as its officers and directors.

In finding for Minoco, the Ninth Circuit panel reinforced what bankruptcy proceedings are all about – which is to provide a uniform forum for the orderly and equitable administration of a debtor's assets and liabilities in exchange for a debtor's fresh start. The broadly defined scopes of property of the estate and the automatic stay are essential to achieving this overall bankruptcy goal. In that light, it is imperative that they are not only broadly defined, but also arise immediately upon the commencement of a bankruptcy case.

*Cathy Ta is an attorney at Best Best & Krieger LLP. She practices in the areas of insolvency, bankruptcy and business litigation.*



# THE BENEFITS OF EMPLOYMENT PRACTICES LIABILITY INSURANCE

by Jamie E. Wrage

Because of the cost, many California employers do not even consider carrying Employment Practices Liability Insurance (“EPLI”) until after they have been hit with a lawsuit. This insurance deserves a second look.

Employment claims of all kinds are on the increase. The cost of defending employment claims regularly outstrips the underlying amount at issue. EPLI can provide coverage for the most common claims asserted in employment lawsuits, such as claims under Title VII of Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, and the Family and Medical Leave Act of 1993, and their California counterparts. EPLI should be seriously considered by all California employers before they must pay to defend a civil complaint or Equal Employment Opportunity Commission (“EEOC”) charge.

EPLI provide employers much-needed protection from expensive discrimination and retaliation claims of all kinds, along with defense-cost coverage for wage and hour claims. Even employers who believe they are doing everything right on the employment front are at risk of employment-related claims from disgruntled or injured workers. Disability discrimination and retaliation claims are a hot topic currently. The EEOC had seen a steady rise in the percentage of disability discrimination claims in the last decade with over 30% of the charges filed in 2015 including a disability discrimination claim. Over 40% of all EEOC charges in 2015 also claimed retaliation. Discrimination and retaliation claims are fact driven and, thus, are often difficult to defeat through summary judgment. Trial means risk. Worse, all of these types of employment law claims allow a prevailing employee to seek attorney’s fees with no reciprocal right on the part of employer. In short, because it is both expensive and risky to defend employment law claims, EPLI insurance often proves worthwhile despite the potentially high cost of the premiums.

EPLI generally pays for defense and indemnity of employment-related claims from the date of interview up to termination. There are some exceptions but covered claims normally include: unlawful discrimination, wrongful termination, harassment, retaliation, invasion of privacy, and defamation related to employment.

So what happens when the claim isn’t about discrimination, harassment or retaliation? Maybe the employee claims he was misclassified or that employer has been incorrectly calculating the overtime rate. While there is no indemnity coverage for wages and related penalties, defense-cost coverage is usually available on an EPLI policy for wage and hour claims through an endorsement. Alternatively, some insurers offer specialty policies to cover wage and hour claims only. This expanded wage and hour coverage is important, because

the cost of defense on wage and hour claims is often the tail wagging the dog. Careful note should be taken of any limits that the insurer places on the defense of wage and hour claims in an endorsement. For example, while an EPLI policy might allow \$1,000,000 in coverage for other claims, the defense coverage for wage and hour claims under an endorsement could be subject to a sublimit of \$100,000. Determining policy limits at the outset prevents serious future disappointment.

Like professional liability policies, EPLI policies are “claims-made policies.” Covered claims must be reported to the insurance company during the policy period, or within the extended period set forth in the policy for reporting, and the alleged wrongdoing must have occurred on or after the policy’s effective date. Like lawsuits, EEOC or Department of Fair Employment and Housing charges should be immediately reported to the insurer to avoid any waiver.<sup>1</sup>

A standard EPLI policy provides coverage on a “self-consuming” or “burning limits” basis. This means that as money is used for defense costs, the amount left to pay damages (claims or settlements) is reduced. Accordingly, any employer’s coverage limits should be high enough to account for any potential award or settlement on top of the cost of defense.

While EPLI policies provide a lot of peace of mind for employers, they do not cure all ills. A willful act by the employer will be excluded from coverage. Equitable relief, such as reinstatement or an injunction against future wrongful employment practices, is not covered. There is no coverage for criminal, fraudulent or malicious acts by the employer or for workers’ compensation claims.

Being hit with an employment claim in California is a matter of when, not if. While EPLI does not cover every claim, it fills a huge gap left by general liability coverage. The first step is talking to an experienced and trusted insurance agent to determine the options, levels of coverage, and deductibles. Then, be sure to read the coverage documents thoroughly for exclusions and limits before purchasing the policy. Finally, immediately report any claim (or demand letter from plaintiff’s counsel threatening claims) to avoid waiver.

*Jamie E. Wrage is an attorney practicing employment and complex litigation with Varner & Brandt LLP in Riverside.*



<sup>1</sup> Some employment-related claims, e.g., defamation or negligence, might be covered under other policies too, such as general liability or directors and officers’ liability insurance policies. Submit claims under all policies that might provide some coverage.



# IN MEMORIAM: HON. E. MICHAEL KAISER

## Eulogy given by Judge Gloria Trask at the Celebration of the Life of Judge E. Michael Kaiser on February 2, 2017

I came to the Riverside Bench in 1995, five years after Judge Kaiser was appointed. I was a commissioner assigned to hear civil matters in downtown Riverside along with Judges Cunnison, Field, Holmes, Miceli, Tranbarger, and Van Frank. My first recollection of Mike is of him pacing outside of his temporary courtroom smoking his big fat and very smelly cigar while helping me with my legal questions. We have been colleagues and friends ever since.

Ever the teacher, Judge Kaiser excelled in the law and was able to take complicated legal issues and reduce them to simple terms. His clerk Sandra, (he insisted on calling her "Saundra" for the last 20 years), tells me that she never went to law school but she understands the law because of the way he explained it to her.

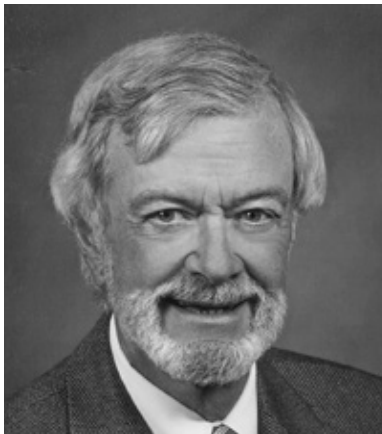
He became a judge on January 25, 1990. He took the oath of office at the same time as Judge Charles Field. They had this silly running joke about which one had seniority based on who was sworn in first. It's funny because seniority for judges is of little consequence.

Judge Kaiser had not been on the bench long before the Presiding Judge Vic Miceli assigned the *Stringfellow* case to him. That case was one of the early toxic tort cases. It involved over 4,000 plaintiffs who lived in the Glen Avon area in Riverside who alleged over 400 defendants had dumped hazardous liquid manufacturing waste in the foothills above their homes. It took five months to select a jury and hear pretrial motions.

A custom courtroom had to be built in an old beauty school facing Ninth Street. It had a jury box for 24 jurors with state of the art electronics, counsel tables for 32 lawyers, bar code readers, and a special sound system. You can imagine the logistic problems with such a large case, not to mention the multitude of complex legal issues coupled with the highly technical scientific disciplines and tragic facts. It took eight months to try the case.

At the end of that lengthy and grueling trial every juror was still in the jury box. I share some of these details to illustrate the kind of judge Mike Kaiser was. He was hard working, innovative, intelligent, and scholarly, but he was also personable and caring. His name will always be synonymous with that famous case known simply as "Stringfellow."

At the same time that the *Stringfellow* case was in trial, the Judges of the Riverside Superior Court elected Judge Kaiser as their Presiding Judge. Such a position is an honor



Hon. E. Michael Kaiser  
March 1940-January 2017

and a reflection of the judges' confidence in his administrative abilities. It is also a tremendous amount of additional work. Judge Kaiser insisted that he could hold the position of Presiding Judge and maintain his regular courtroom calendar and workload. And he did.

In 1996, he talked to me about his desire to hear juvenile dependency cases. Although he had no experience in this area of the law he knew he could learn it and make a difference in the children's lives. His court reporter of 17 years, Sue Norris, tells me that one day a mother appeared before him on a case and stated that if the father was removed from the home there would be

no money for a Thanksgiving turkey. Judge Kaiser asked the social worker what could be done for the family. Upon hearing there was nothing to be done – he stepped down from the bench, went to the woman, took out his wallet and gave her \$100. He remained in juvenile court until 1998, when he returned to the Historic Court House and sat in Department 3 until he retired.

Judge Kaiser and I had adjoining courtrooms and we shared a secretary, Rose. Rose would tell him that he didn't smile often and that he had a stern look. To get him to smile more she put a picture of her Chihuahua on his bench along with a joke every day. As you all know, Judge Kaiser refused to use a computer. Rose had to read all his emails and he told her just tell him about the important ones.

My fellow bench officers remember Judge Kaiser's love of our Historic Court House court law library. When not on the bench he could be found with law books spread about the table along with a yellow pad doing research.

I must tell you about one more case that was assigned to him. *City of Barstow v. Mojave Water Agency*. That case involved the water rights in the Mojave River Basin which encompassed several cities and about 3,600 square miles in central California. This case had an unprecedented number of parties ranging from cities, to large corporate farms and ranches, to individual homeowners. It involved complicated, esoteric issues of riparian or legal rights to water. His judgment was issued in 1996. It remains in effect today and is reviewed annually to adjust the water allocations of each party.

Judge Michael Kaiser was a brilliant legal scholar. He was a lawyer's lawyer and a judge's judge.

I am blessed to have known him as my friend and mentor.

*The Honorable Gloria C. Trask is a judge with the Superior Court of California, County of Riverside.*



## Remembering E. Michael Kaiser by Gerry Shoaf

I met Michael Kaiser in the late 1960s when we were both on the deposition trail, preparing cases for trial by our Senior Partners and bosses — Mike at Chase Rotchford and me at Thompson & Colegate. We became friends on a professional basis although not on a social basis at that point.

Years later, in the mid to late 1970s, Mike was a partner at Chase Rotchford and I was a partner at Redwine and Sherrill, handling the litigation for the Coachella Valley Water District (CVWD) and Eastern Municipal Water District. A series of severe summer tropical storms over a three year period in the Coachella Valley resulted in several cases for flood damage against CVWD. Mike was designated by the District's insurance carrier to represent it and I assisted him as counsel for the District. We worked closely together, actually rooming together in Palm Springs during the most important case which Mike guided to a 12 — 0 defense verdict. During that period I closely observed Mike's MO — absolute immersion into the facts and preparation to the point of knowing more about the facts and applicable engineering points than the experts on the other side. Mike was relentless (in a kid-gloves sort of way) in handling expert witnesses, ultimately being able to bring down the hammer at just the right time, and he usually won the case. I believe Mike also used this approach, knowing as much if not more

than the experts — as a trial judge because he occasionally came to borrow books from our Redwine and Sherrill library.

Sometime in the late 1980s, Mike joined Redwine and Sherrill as a partner, taking over the task of handling water district and other major litigation. During the period he was with us, Mike had an open door policy for our young lawyers as well as for partners, serving as a teacher, trainer, sounding board and “go to guy.”

Mike and I had adjoining offices and when his door wasn't closed while he smoked a large, stinky cigar, we would often spend time just kibbitzing. During that time my wife, Claire, and I became social friends with Mike and his delightful (and insightful) wife, Pat. We continued to socialize — usually an occasional dinner or events at the Redlands Bowl — so we stayed in touch even after Mike went on the Bench.

Mike was one of my most favorite people. I am grateful to have known and learned from him. I missed him professionally when he became a judge, but I know that it was a good move for him and for society in general because he was an outstanding judge — both while serving in Juvenile Hall and thereafter as a trial judge.

I miss him still, but I am extremely grateful to have known and spent time with him, both professionally and socially. He was one of a kind.

*Gerry Shoaf is the managing partner at Redwine and Sherrill in Riverside.*



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# STRINGFELLOW MEMORIES

by Douglas F. Welebir

In the early 1980s, a group of citizens led by Penny Newman organized to seek compensation for a myriad of injuries that they related to the presence of what became known as the Stringfellow Acid Pits. This dump site was established by the State of California as a repository for industrial waste from the manufacturing firms of Southern California. Eventually, 32 million gallons (plus or minus) of volatile organic compounds, heavy metals, pesticides, DDT, herbicides, and other byproducts of manufacturing were trucked and dumped into open ponds north of Highway 60 above the community of Glen Avon. The waste leaked into the groundwater through the permeable unsealed bottoms of the pits, evaporated naturally into the air, and was force-evaporated through a spray system that misted the liquid contents into the air, to be borne away on the prevailing winds from the northeast. In heavy rain years, the ponds were inundated with water, to the point that once, the “dam” was intentionally breached by the operator and the contents allowed to flow down through the community.

Tom Duggan and Tony Klein of Klein, Wegis & Duggan in Bakersfield were retained to represent a group of potential plaintiffs that eventually swelled to 4,400. All of the claims were individualized, from wrongful death to diminution in property value, and the task was immense. The New York/San Diego firm of Milberg, Weiss, Bershad & Lerach was associated in because of its experience in mass torts.

In 1990, after more than five years of pleading and discovery wars between the plaintiffs and scores of defendants, during which I had made a few appearances as “local counsel,” I was retained as lead trial counsel for the plaintiffs. During the two years leading up to the commencement of trial, I worked full-time, with a team of 10 to 12 lawyers provided by my co-counsel, organizing the evidence, witnesses, and experts covering the spectrum of scientific knowledge. One of the most memorable experts was Cesare Maltoni, M.D., from the Italian Institute of Oncology in Bologna, who had first established the link between exposure to industrial chemicals and cancer. Psychologists, hydrologists, geologists, organic chemists, industrial chemists, chemical engineers, meteorologists, dermatologists, neurologists, and almost as many other “ists” as can be imagined were involved on both sides of the case.

The defense teams were led by Barry Goode for the large dumpers, Stanley Orrock for the County of Riverside, and Howard Halm and Dan Buckley for the State of California. Barry Goode once told me that during the pendency of the

litigation, more than 1,000 lawyers had worked on the case for the defense.

Judge Victor Miceli assigned the case to newly appointed Judge E. Michael Kaiser, who embraced the challenge, using some of the most innovative and advanced case-management techniques ever enforced. Through a simultaneous ADR track with Judge Miceli, Jack Trotter of JAMS, retired federal District Judge Lawrence Irving and others, some individual defendants and small groups of defendants began settling. During Kelly-Frye hearings and multiple deposition tracks, the plaintiffs were forced to refine their theories and claims.

As trial approached, Judge Kaiser established a process through which 14 representative plaintiffs were selected as the first “test plaintiffs,” so that with a finding of liability, the value of representative damage claims could be established, with the goal of additional settlements.

In August 1992, jury selection began with time qualification and hardship screening. For two and a half months, at an unremitting pace, a pool of time-qualified jurors was winnowed from 1,854 prospective venire members. Concurrently, the parties engaged Tilden-Coil to design and build a custom courtroom in an old beauty school facing Ninth Street. It featured all the amenities, including a jury box for 24 jurors and a fully interactive courtroom, with state-of-the-art electronics (long before the O.J. trial): monitors for the judge, clerk, court reporter, witness, and every counsel table (for 32 lawyers), telestrators, laser disc players, bar code readers, duplicators, a sound system, and more. Judge Kaiser appointed an Evidence Master, retired Judge Richard Garner, who held admissibility hearings every day for weeks, during which the trial lawyers reviewed all proposed exhibits and either agreed or objected. The objection was noted and an advisory ruling made, the aim being to streamline the trial. A trial time limit, to be enforced by the use of a chess clock, was established, with defense and plaintiffs receiving equal hours.

In early January 1993, a jury including 12 alternates was sworn, with no juror knowing his or her status. Within a few days of the first witness, all of the defendants, except the State of California and one small dumper, made a collective settlement offer, leading to additional negotiations and settlement.

Judge Kaiser continued his creativity: the trial schedule would alternate, five days one week followed by four days the next; a trial day was 8:15 a.m. to 1:30 p.m., with two 10-minute breaks; and lawyers were ordered back at 2:30 p.m. to resolve all evidentiary issues for the next day (usu-



ally these sessions did not end until well after 5:00 p.m.). Witness preparation for the next day then began, over dinner eaten at your desk. This schedule made for extremely smooth and efficient trial days – so much so that when the jury received the case, all 24 jurors were still sitting in the box. It was not easy on the lawyers or the judge.

During the five months of jury selection, contested evidentiary offerings, motions in limine, and eight months of actual trial, there were dramatic, boring, serious and humorous moments. One of the most memorable occurred when a troubled “future plaintiff” appeared in the courtroom while Howard Halm was cross-examining a witness. The young man proceeded to drop his pants and “moon” everyone in the courtroom, while incoherently yelling something about, “Look what the state has done to me.” As he was manhandled by the bailiff out of the gallery into the vestibule, the sounds of a “take-down” and arrest could be heard in the courtroom. The situation was quickly defused by one of Judge Kaiser’s infamous quips, and the case went on.

As the last juror filed from the courtroom to begin deliberations, Dan Buckley and I turned and looked at each other: with a handshake seeming insufficient, the only imaginable reaction spontaneously occurred – every lawyer in the courtroom embraced one another. It was over!

In late September 1993, after one month of deliberation, the jury returned a unanimous verdict for the plain-

tiffs against the State of California and a defense verdict for the other remaining defendant, represented by Rob Kelly. Within a few months of the verdict, a final settlement of the entire case for a total of \$110 million was reached. The 13 months of continuous trial activity and the eight to ten hours of daily “togetherness” were characterized by a profoundly respectful, professional, and sometimes contentious collegiality.

I have been asked repeatedly what it was like to try a case of such complexity and length. I can only observe that while you are engaged, it is what you do – after the fact, reality hits you. From the time records that were kept, I learned that in three and a half years of full-time involvement with the *Stringfellow* case, my average work week was 82 hours. My longest week (obviously during trial) was 104 hours. However, I remain thankful for the opportunity afforded me to try this case. Would I do it again knowing what was ahead? Probably not. But then again: It all depends.

*Douglas F. Welebir is a partner with Welebir | Tierney in Redlands and specializes in plaintiff’s personal injury and product liability cases.*

*This article was originally published in the May 2011 issue of the Riverside Lawyer and is reprinted in the current issue in honor of Judge E. Michael Kaiser.*



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# CIGA: COVERING CLAIMS WHEN AN INSURANCE COMPANY BECOMES INSOLVENT

by Marlene L. Allen

Attorneys can protect themselves from potential malpractice claims by advising their clients to submit claims to all available insurance carriers if they are named in a lawsuit. If coverage is denied, analyze the reason for the denial and, if there is any valid argument that it is a covered claim, continue to insist that coverage be provided. In California, if there is any potential for coverage, the insurer must provide a defense.<sup>1</sup> As long as there is at least one cause of action that has the potential for coverage, the carrier should accept the claim.<sup>2</sup>

But what happens if the insurance carrier has been declared insolvent? In 1969, the California Legislature created the California Insurance Guarantee Association (“CIGA”) to establish a fund to pay claims of insolvent insurance carriers that are licensed to do business in California. CIGA is a statutory entity that depends on the Guarantee Act for its existence and for a definition of the scope of its powers, duties, and protections.<sup>3</sup> The CIGA Board of Governors consists of nine insurer members and four public members.

CIGA was not created to act as an ordinary insurance company. It was created to provide a limited form of protection for insureds and the public, not to provide a fund to protect insurance carriers. CIGA does not issue policies, collect premiums, make profits, or assume any contractual obligations to the insureds. CIGA’s authority and liability are limited to paying covered claims.<sup>4</sup> Covered claims are defined in the Insurance Code as “the obligations of an insolvent insurer” that satisfy all of the listed requirements.<sup>5</sup> The Guarantee Act does not broaden the potential for coverage, but it does provide coverage if the applicable policy would have covered the claim. The statute also enumerates specific types of claims that are not covered claims.<sup>6</sup>

CIGA will not only provide a defense for covered claims, but will also pay the claim if the policy would have provided coverage. Where does CIGA’s money come from if the insurance company is insolvent? CIGA’s revenue is derived from assessments of its member insurers, distributions from the estates of insolvent member insurers, and investment income. Revenues received are allocated into the three separate funds and are used to pay the claims and costs allocated to the applicable line of business. The three separate funds guarantee different lines of insurance: (1) workers’ compen-

sation; (2) personal lines (auto, homeowners, personal liability); and (3) other (commercial property, liability, products liability, supplemental and pollution). Claims or statutory benefits pursuant to a policy under categories (2) and (3) are limited to no more than \$500,000.

CIGA is required to collect initial premium charges from its member companies for the insolvency insurance provided by CIGA in an amount necessary to pay covered claims and expenses of insolvent member insurers.<sup>7</sup> The statute authorizes separate premium charges for each of the three categories of covered claims (workers’ compensation claims, automobile and homeowners claims, and all other claims) that CIGA pays. Premium charges are currently limited to one percent of written premiums for any category of covered claims. In addition, Insurance Code section 1063.73 provides for the ability of CIGA to request the issuance of bonds to more expeditiously and effectively provide for the payment of covered claims that arise as a result of the insolvencies of insurance companies providing workers’ compensation insurance.

Since its creation, CIGA has successfully taken over the covered claim responsibilities of over one hundred insolvent member insurers. From 1969 and 2000, CIGA averaged payments of approximately \$51 million per year. By the year 2004, a number of insolvencies from large workers’ compensation member insurers greatly increased CIGA’s payments. In 2011, CIGA paid in excess of \$234 million in claims arising from insolvent member insurers. From 2007 through 2011, CIGA paid out in excess of \$1.4 billion, an average of approximately \$280 million per year.

Most people would not consider depositing large sums of money into a bank unless it is insured by the Federal Deposit Insurance Corporation (FDIC) or into a credit union unless it is insured by the National Credit Union Administration (NCUA). Similarly, when purchasing insurance, selecting a company that is a member of CIGA provides some assurance that coverage will be available should the company become insolvent.

For more information about CIGA, you can visit the website at: <http://www.caiga.org>.

*Marlene L. Allen is senior counsel with the law firm of Gresham Savage Nolan & Tilden, PC. The firm has offices in Riverside, San Bernardino and San Diego. The information in this article is not intended as legal advice and is general in nature. Most of the factual information was obtained from the California Insurance Guarantee Association’s website.*



1 *Gray v. Zurich Insurance Co.*, 65 Cal.2d. 263 (1966).

2 *Montrose Chemical Corporation v. Admiral Insurance Co.* 10 Cal.4th 645 (1995).

3 California Insurance Code sections 1063 et seq.

4 *Isacson v. California Ins. Guarantee Assn.*, 44 Cal.3d 775, 784 (1988).

5 California Insurance Code section 1063.1(c)(1).

6 California Insurance Code sections 1063.1(c)(3) through (12).

7 California Insurance Code section 1063.5.

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# LIFE AND THE FALLACY OF INSURANCE

by Juanita E. Mantz

Insurance brokers will try and sell you insurance for everything under the sun. Car insurance, life insurance, burial insurance, earthquake insurance, supplemental disability insurance, malpractice insurance, and the list goes on and on. Insurance is designed to protect us. But in these tumultuous times, insurance cannot cover us for everything bad that can happen.

Some years ago, a tenant rented my house when I moved from my home in the North Fontana area up to Oak Hills, California to help take care of my mother-in-law. She was in her 70s and her husband, my father-in-law, had passed away suddenly. She needed us. So we rented out our home and moved in with her almost immediately.

We rented out our house through a property management company; they even found a tenant for us. I thought I was covered. It seemed so easy. I had a property manager that handled everything. When I asked to meet the tenant, the property manager waved away my request saying it was not necessary. I also alerted him to the fact that the tenant's credit report looked bare, which he also assured me was of no concern. He said not to worry and that he would routinely check on my home.

Everything seemed fine until about a year and a half in. The rent checks stopped coming and I learned that to do an eviction in my county in California takes four months to get a court date. I hired a lawyer and they served the tenant and eventually six months later, we got our eviction.

When I walked into the house, I was flabbergasted. It was in shambles. The tenant had burglarized the property after being evicted and had poured car oil into the carpets, knocked holes in the walls, and plugged the pipes with towels and other debris. In short, my house was in ruins with foot after foot of trash and debris and what looked like empty prescription bottles. I started crying and immediately called the police and filed a police report and filed a claim with my insurer. Next, I called the property manager who, it turned out, had not done his due diligence and had not checked on the property as promised, and it turns out, the credit report was scrubbed and the tenant had used a fake name and social security number. I found out later that these tenants had thrashed a house a few years earlier in my same neighborhood.

Ultimately, the insurance did kick in to pay some of the damages, but only because I filed a police report. The insurer did not make us anywhere near whole, after tens

of thousands of dollars of losses for property damage, and lost rent and attorney's fees. In addition, the property manager settled with me for his deductible. The couple of thousand dollars was a paltry sum considering his gross negligence and the amount of damages in lost rent (as I cannot enforce my judgment), but, I am not litigious and know that a bird in hand is always better than filing suit.

I guess the moral of the story is that you cannot delegate the important things. Meet any tenants if you decide to play landlord in this most tenant friendly of states. Do your own research. Check your policy to make sure vandalism is covered. And don't use a property manager unless you know they do their job well. And listen to your instincts.

The other thing I have to say in this article is a truism. Life is hard and insurance cannot protect you from everything. Bad things happen, people die, bad people get elected and still we must soldier on. And if there is anything I have learned in my 15 years as an attorney (seven years as a big firm civil litigator and eight years as a deputy public defender), it is that tenacity matters and so do ethics.

And karma does exist.

*Juanita E. Mantz is a Riverside deputy public defender and represents clients in incompetency proceedings in Department 42. She is also a writer and a member of the Riverside Lawyer Publications Committee.*



## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective May 30, 2017.

**Marie I. Braun** – Holstrom Block & Parke APLC, Corona

**Randa Farid Ezzat** – Napoli Shkolnik PLLC, El Segundo

**Antony Jones (A)** – Geosyntec, Riverside

**James Lawson (A)** – Lawson Professional Fiduciary, Los Angeles

**James Robert Thacker** – JLR Thacker Law, Mission Viejo

**Timothy Zachary Wong** – Law Office of Timothy Zachary Wong, Chino Hills

(A) – Designates Affiliate Members



# OPPOSING COUNSEL: DAVID D. WERNER

by Stefanie G. Field

If you have had a case with David Werner, you probably know him as an affable, courteous and knowledgeable attorney, one who is unafraid to advance his client's interests or realistically assess the merits of a case. David considers himself to be a problem solver, trying to nip problems in the bud for his clients, broker reasonable resolutions, and/or litigate as necessary. He has a well-deserved reputation for keeping his word and for not making threats that he does not intend to follow through on. Words are his tools and civil procedure is his friend. For those who have not been involved in any cases with him, David is a business litigator with an emphasis on all aspects of trust and estate litigation. His calm demeanor, even temperament and doggedness are well suited to his practice area, an area which can be fraught with intense emotion for clients.

I have been fortunate to know and work with David for a number of years. There is much more to him than his legal abilities. An Oregonian transplant, David and his wife moved to the Inland Empire after college and, with encouragement from a friend, he began law school in 1988. Despite the distance, he commuted by bus daily to Los Angeles for school, using that time to study or sleep. With a couple of babies at home, that ride may well have been an oasis of peace and relative quiet!

Despite the plethora of firms in the L.A. area, David liked the small town feel and community he found in the I.E. His first job was clerking at a firm in San Bernardino where he got the interview solely because of his name – one of the partners was also “David Werner” and they were curious about an applicant with the same name! They had been looking for a second year law student, but they hired David as a first year and he continued working for them even after the summer clerkship was over. Fate then intervened. Through mutual connections at church, David was introduced to Ted Stream, another Pacific Northwest transplant. Before he knew it, he began clerking for Stream & Associates and continued on with them after graduating law school and through their merger with Gresham Savage Nolan & Tilden. Yes, David is the rare bird who has spent his 20 plus year career at basically one firm.

David's life is not all work and no play. To the contrary, he seems to have mastered balancing work and home life.



David D. Werner

David and his wife have been married for over 30 years and raised three children of whom he is very proud. In fact, he uses them as an excuse to travel the globe, because it seems like one or the other of them is always working overseas and thus, visiting the kids has become an excuse to travel. With a child employed overseas by the State Department, his excuse to travel is not likely to go away any time soon. He is also active in his church and in the community, and is involved in too many organizations over the years to list. As if this were not enough, he is also an excellent chef, using home grown ingredients

to craft tasty concoctions (some of which he is kind enough to share with us in the office).

This article is just the tip of the iceberg. If you have a chance, ask David about how he and his wife met, or have him tell you the story of Ricky and Fred. You are sure to be entertained.

*Stefanie G. Field, a member of the Bar Publications Committee, is a senior counsel with the law firm of Gresham Savage Nolan & Tilden.*



## \* ATTENTION RCBA MEMBERS \*

### How would you like to receive (or read) the *Riverside Lawyer* magazine?

Some members have told us they prefer reading the online version of the *Riverside Lawyer* (available on our website at [www.riversidecountybar.com](http://www.riversidecountybar.com)) and no longer wish to receive a hard copy in the mail.

**OPT-OUT:** If you would prefer not to receive hard copies of future magazines, please let our office know by telephone (951-682-1015) or email ([rcba@riversidecountybar.com](mailto:rcba@riversidecountybar.com)).

Thank you.

# NOMINEES FOR RCBA BOARD OF DIRECTORS, 2017-2018

The Riverside County Bar Association's Nominating Committee has nominated the following members to run for the RCBA offices indicated, for a term beginning September 1, 2017. (See the biographies below, which have been submitted by each candidate.) Please watch your mail for ballots. Election results will be announced at the RCBA General Membership meeting in June.



**L. Alexandra Fong**  
*President*

As President-Elect for 2016-2017, Ms. Fong will automatically assume the office of President for 2017-2018.



**Jeffrey Van Wagenen**  
*President-Elect*

For almost 20 years, I have been proud to call myself a member of the Riverside County Bar Association. The Riverside County legal community has been my home ever since I first came to town as a law clerk for the District Attorney's Office in 1996. Since that time, I have been lucky enough to have experienced much of what the practice of law has to offer.

I am currently the managing director of Riverside County's Economic Development Agency (EDA). EDA has been tasked with enhancing the economic position of the county; improving the quality of life for our residents; building and managing county facilities; encouraging business growth within the county; developing a trained workforce; improving existing communities; offering a variety of housing opportunities; and, providing cultural and entertainment activities. In so doing, EDA strives to make Riverside County the most business friendly, family oriented and healthy community in the nation. In my new capacity, I have been given the opportunity to appreciate the value that all of our members add to the community, not just those working in the criminal justice arena.

Before joining EDA, I was an assistant district attorney for the County of Riverside, from 2011 to late 2014. I was tasked with the countywide administration of the District Attorney's Office and my duties included: meeting the human resources needs of 700 employees and more than fifty volunteers; development and control of an annual budget that exceeds \$100 million; coordination of our office wide information technology efforts; management of our physical facilities, including offices in Riverside, Banning, Murrieta, Indio, and Blythe; and, the supervision of the clerical support division of the office. I was fortunate enough to direct the Training and Writs & Appeals Units of the office. I also had the distinction of being the DA's Office representative whenever the Office is a party in a civil action.

Prior to returning to the DA's Office, I had my own state and federal criminal defense practice with offices in Riverside and

Murrieta, and temporary space in Indio. In addition to becoming certified as a specialist in criminal law by the State Bar of California's Board of Legal Certification, I had the opportunity to serve as a Judge Pro Tem in the Court's Temporary Judge Program.

My experience has given me the benefit of seeing our legal community from a broad range of perspectives, as a law office administrator, a prosecutor, a defense attorney, a civil plaintiff, a civil defendant, and a judge pro tem. I am proud to bring that perspective to the RCBA Board.

I have tried to give back to the legal community that has given me so much. I currently serve as the vice president, having previously been the chief financial officer, secretary, and a director-at-large of the Riverside County Bar Association. In addition, I am proud of my participation on two committees: the RCBA Building Renovation Committee and the Technology Committee. As a member of the Building Committee, I relish the opportunity to remodel our "classic" RCBA building, where I had offices for ten years, and restore it to its former glory. As a member of the Technology Committee, I am pleased to be constantly working to improve your on-line experience. I have previously served as president of the Leo A. Deegan Inn of Court (and served on its executive board for many years), Chair of the Criminal Law Section of the RCBA, and as a member of the advisory committee of VIP Mentors (also known as "Volunteers in Parole"). I am also pleased to have participated for more than ten years in the RCBA Bridging the Gap program, speaking to new attorneys on the practice of criminal law.

I live with my wife and two children in the city of Riverside. My wife is actively involved with local non-profits, and has previously served as president of the local chapter of the National Charity League, two terms as president of the Riverside County Law Alliance and as a board member for the Junior League of Riverside.

If I am provided with the continuing opportunity to serve each of you on the RCBA board, my goal will be to make sure that our board never forgets our mission: to serve our Members, our Communities, and our Legal System. I would be honored to serve as your president-elect and would appreciate the opportunity to continue to serve on the RCBA executive board. Thank you for your previous trust, and I look forward to your continued support.



**Jack B. Clarke, Jr.**  
*Vice President*

Jack B. Clarke, Jr. is a partner in the Education Law and Litigation practice groups of the Riverside office of Best Best & Krieger LLP. He joined Best Best & Krieger after graduating from law school in 1985. Mr. Clarke is involved in litigation concerning education law, special education disputes, public agency litigation and other types of substantial litigation matters.

Mr. Clarke received his Juris Doctorate degree, with distinction, from the University of the Pacific, McGeorge School of Law,



in 1985 and his B.S. degree in Business from the University of California at Riverside in 1980. In law school, Mr. Clarke was elected to the Order of the Barristers, a national honorary society for outstanding achievement in courtroom advocacy, and served as a staff writer on the Legislative Review of the Pacific Law Journal, Vol. 15, January 1984. He also received the United States Law Week Award for Outstanding Contributions to the law school community. He is also a graduate of the National Institute on Trial Advocacy.

In 2001, Mr. Clarke was presented with "The Citizen of the Year" Award by the Greater Riverside Chambers of Commerce. The Riverside County Bar Association awarded Mr. Clarke with the James Krieger Meritorious Service Award in September 2010. He has twice been acknowledged as one of the 100 most influential lawyers in California by California Law Business Magazine. In February of 2011, Mr. Clarke was presented with the Omar Stratton Award by the NAACP. The American Diabetes Foundation also presented Mr. Clarke with the "Father of the Year" Award in June of 2011. In 2012, he was awarded the "Terry Bridges Outstanding Attorney Award" by the Leo A. Deegan Inn of Court. More recently, Mr. Clarke was awarded the "Frank Miller Outstanding Civic Achievement Award" by the Mission Inn Foundation in 2015. Mr. Clarke is also a past Chairman of the Board of the Greater Riverside Chambers of Commerce. He currently serves on the Board of Directors of the Riverside County Bar Association.



**Sophia Choi**  
*Chief Financial Officer*

Sophia Choi is a deputy county counsel for Riverside County and has been with the office since 2006. She graduated from Notre Dame High School in Riverside as valedictorian. She received her BA degree from the University of California, Los Angeles with highest Latin honors. She was a member of the Alpha Kappa Delta Sociology Honors Society and served as the general manager for the Southern California Korean College Students Association. Sophia Choi received her JD degree at the age of 22 from Southwestern University School of Law in the SCALE two year JD program and was co-editor-in-chief for the *Advocates*. She received the CALI Excellence for the Future Award in Constitutional Perspectives. During law school, Sophia did an externship with the California Attorney General's Office in the Criminal Appeals, Writs, and Trials Division.

Sophia was the co-founder and inaugural president of the Asian Pacific American Lawyers of the Inland Empire. She has received special recognition from the City of Riverside, being honored as a recipient of the HRC Riverside Heroes Award by the Human Relations Commission and Mayor Ron Loveridge for her community involvement.

Sophia Choi has been active in the RCBA for several years. She is a contributing writer of the RCBA's Bar Publications Committee, for which she has written numerous articles, including judicial and attorney profiles and featured articles. She has also been the co-chair of the Law Day Committee, through which efforts were made to contribute to the general public of the Riverside County community. Sophia participated as a scoring attorney in the Mock Trial program for several years. She further served as the director-at-large for the Riverside County Barristers Association and is currently the secretary-treasurer of the Leo A.

Deegan American Inns of Court. She has also served as a director-at-large of the RCBA for two years and currently serves as its secretary. Sophia Choi would love the opportunity to continue to serve the Riverside community as the RCBA's chief financial officer. Riverside has been her home since the age of seven, and she would love to work actively to contribute to the advancement of the RCBA. Please vote for Sophia Choi.



**Nick Firetag**  
*Secretary*

I am honored to be considered for the position as secretary for the RCBA. I am a life-long Riverside resident. I graduated magna cum laude from the University of California Riverside in 2000. During my time at Pepperdine Law School I won the National Moot Court Criminal Procedure Competition in San Diego, was the editor-in-chief of the Dispute Resolution Law Journal, and graduated cum laude. After graduating in 2005, I started working in the litigation department at Gresham Savage Nolan & Tilden. I am currently a shareholder with the firm.

From 2007–2014, I was an adjunct professor for CBU's School of Business. In the fall of 2007, I taught an undergraduate course entitled "Introduction to Business Law". From 2008–2014, I taught two MBA courses entitled "Legal Issues for Management" and "Managerial Ethics."

I am actively involved in several bar association groups and other non-profit charities. I am currently serving the second year of a two-year term as a director-at-large for the RCBA. During my term, I was honored to have the opportunity to help create a new RCBA mentorship program in coordination with the Riverside Probation Department's Bridge Program, wherein attorneys are paired with at-risk young adults to help them end their cycle of crime. We are currently looking to expand the program to include higher risk individuals. I am also serving as a committee member for another RCBA program, the Lawyer Referral Service.

In addition to my work with the bar association, I also serve on the board of directors for Riverside Habitat for Humanity (where I am the secretary), which provides low-income housing for individuals residing in Riverside County. I also serve on the board of directors for Glocal Outreach, which has the dual goal of providing medical assistance in emergency situations nationwide and assistance with small, local churches.

My wife (Jamie) and I will celebrate our 17th wedding anniversary this July. We have three children; Charlie (age 11), Sadie (age 9), and Azaira (age 6).

I am proud to work in a legal community that puts such a strong emphasis on civility and ethics. I would consider it a great honor to continue representing all of our members on the board of directors as your secretary.



**Kelly Moran**  
*Secretary*

I am so incredibly honored to have been nominated for the secretary position on the RCBA Board of Directors. I have had the opportunity to serve as a Board member for three years, first as the 2013-2014 Riverside County Barristers president and more recently as a director-at-large from

2015–2017, and would be privileged to continue that experience in the future as the 2017–2018 secretary of the RCBA.

As a Riverside native, I strive to give back to the community that I have called home for so long. A graduate of Notre Dame High School, I went on to obtain dual degrees in Philosophy and Political Science from UC Riverside. After obtaining my JD and a Certificate in Dispute Resolution from Pepperdine University School of Law, I returned home and was fortunate enough to begin my career as a litigator at Thompson & Colegate LLP. Currently, I am a deputy county counsel in the Office of the County Counsel in Riverside where I have worked in Public Safety and Risk Management Litigation.

Throughout my time as a practicing attorney, I have had many wonderful experiences in the Riverside legal community. Most near and dear to my heart this year has been my work in helping to establish the first high school Mock Trial team at my alma mater, Notre Dame. This experience, championed by myself and four other Riverside attorneys who are also Notre Dame alumni, has been a challenging and rewarding endeavor and I look forward to watching this program grow in the years to come.

Additionally, I am so fortunate to have been involved in helping to lead the Riverside County Bar Foundation's Adopt-a-High School program. The program, which was founded by Justice Douglas Miller and the Desert Bar Association, partners the RCBA with a local high school in the hopes of introducing students to the legal profession. Having spent two years in a partnership with Arlington High School, the program branched out to establish a new connection at Rubidoux High School this year. Our program, which is tailored to the needs of the student population and the preferences of the teachers involved, has included a "Legal Careers Day" which introduced students to a variety of careers in the legal profession, a "Mock Trial" presentation which gave students the opportunity to hear a case argued by a deputy district attorney and deputy public defender, and a two-part lecture series on constitutional law issues in preparation of the students' advanced placement exams. It is our hope that the program will be expanded to additional schools in the future.

In addition to my work with the RCBA and Riverside County Bar Foundation, I am also privileged to have been included as a member of the Court's Civil Bench and Bar Panel and the Leo A. Deegan American Inns of Court. Outside of the legal community, I enjoy volunteering as a "Wish Granter", member of the Speaker's Bureau, and member of the Medical Outreach Team for the Orange County and Inland Empire chapter of Make-A-Wish.

I would be honored to have the opportunity to continue to serve the Riverside community as the secretary of the RCBA Board.



**Abe Feuerstein**  
*Director-at-Large*

Since my appointment in September 2009, I have served as an Assistant United States Trustee employed by the United State Department of Justice. As an Assistant U.S. Trustee, I supervise the Riverside District Office of the Office of

the United States Trustee, and represent Peter C. Anderson, the United States Trustee. The mission of the United States Trustee Program is to serve as a "watchdog" to help protect the integrity and promote the efficiency of the nation's bankruptcy system.

Prior to joining the U.S. Trustee Program, I was a principal of the Central Valley, California based law firm, Suntag & Feuerstein, where I practiced business litigation with an emphasis on bankruptcy. Previously, I practiced business litigation and bankruptcy with two large national law firms based in San Francisco, California: Thelen, Marin, Johnson & Bridges (1987-1990); and Heller, Ehrman, White & McAuliffe (1990-1992). I then became a partner in the small-to-mid-sized San Francisco based firm Feldman, Waldman & Kline, where I continued to practice business litigation and bankruptcy, with an emphasis on the representation of Chapter 7 bankruptcy trustees. I attended Vassar College (A.B. 1984) and Boston University School of Law (J.D. 1987).

Before moving to the Inland Empire, I served on the Board of Governors of the San Joaquin County Bar Association and chaired the county bar association's continuing legal education committee. In San Joaquin County, I was a founding member of the local Inn of Court. I am the current co-chair of the RCBA CLE Committee, and I serve on the publication committee and frequently contribute articles for Riverside Lawyer Magazine, RCBA's monthly publication. For the past three years, I have been a member of the Leo A. Deegan Inn of Court.



**Stefanie Field**  
*Director-at-Large*

Stefanie Field has been an active member of the RCBA since October 1999. Over the years, her involvement has grown from Mock Trial volunteer to participation in several committees, providing numerous contributions to the

*Riverside Lawyer*, and becoming the chair of the Business Law Section. She has also volunteered to provide MCLE presentations for the RCBA, including a nuts and bolts primer on dispositive motions and dealing with disputes between business owners. She is also a long-standing member of the Leo A. Deegan Inn of Court. Ms. Field is proud to practice law in the Inland Empire and welcomes the opportunity to further contribute to the legal community as a director-at-large.

Having been an active member of the community, and involved with several nonprofit organizations, Ms. Field is aware of the obligations associated with sitting on the board of directors and is ready, able and willing to make that commitment. In fact, she has been a director on the board of several other organizations, including holding officer positions, where such positions are not empty titles, but positions of significant responsibility and authority. This experience will enable her to fulfill the obligations and duties of director.

As general background, Ms. Field is a senior counsel at Gresham Savage Nolan & Tilden. She graduated from the Georgetown University Law Center in 1995 and was admitted to the California bar in February 1996. While not a Riverside native, Ms. Field has made this community her home. Since 1999, she has practiced law in Riverside and has embraced the



Riverside legal community. Riverside has a robust legal community where professionalism, civility and community matter. That attitude is one of the RCBA's strengths and is part of the reason Ms. Field has been so active in the RCBA.

In sum, Ms. Field's lengthy history with the RCBA, her commitment to the Riverside legal community and her past experience with nonprofits makes her an ideal candidate for the position of director-at-large. Ms. Field would embrace the opportunity to use her experience to benefit the RCBA and requests your support in this regard. Thank you.



**Chris Johnson**  
*Director-at-Large*

As a lawyer for over 20 years, Chris has handled transactional and litigation matters in real estate, land use, title review, bond (re)financing, public finance, school and church development, business law and estate planning.

After receiving his Juris Doctorate from the University of San Diego cum laude in 1993, he obtained his initial training as an associate working with the trial lawyers in the San Diego law firm formerly known as McInnis, Fitzgerald, Rees & Sharkey. In 1998, he worked as in-house counsel for the Insurance Company of the West. From 2002-2015, he was the principal of his own law practice: Single Oak Law Offices in Temecula. In November of 2015, Chris joined the prominent and well known Riverside based firm Reid & Hellyer, and became a partner in February of 2017. Chris is the senior attorney of their Temecula location.

Chris has been a member of the RCBA since 2010. Since that time he has participated as a panel member during a day of "Access to the Courts" for the public and as scoring attorney in the High School Mock Trial competitions. Chris has been co-chair of the Solo/Small Practice Section of the RCBA for about 3 years now.

As a director-at-large, Chris would strive to enhance several facets of the ongoing enterprise:

- Increase the participation and coordination of private, public, and governmental practitioners in the Association;
- Garner greater inclusion of those practitioners who practice outside of the traditional downtown area such as southwest county and the desert communities;
- Emphasize greater civility and professionalism in practical legal training curriculum such as the ongoing academy training program. Also explore the possibility of bringing that program to other regions of the county.

He and his family volunteer at the homeless outreach on 4th Street in downtown San Diego and at the Doors of Faith Orphanage north of Ensenada. He has lived in Temecula with his wife and their two teenage daughters since 2003. His oldest daughter is about to complete her first year at UCLA. Since his union with Reid & Hellyer, Chris has become involved with a few local southwest Riverside County committees, such as the Economic Development Corporation of Southwest Riverside County (EDC) and the Murrieta-Temecula Group, both of which focus on economic, entrepreneurial and business development within the Southwest Riverside community.



**Jennifer Lynch**  
*Director-at-Large*

Jennifer Lynch is an associate in Best Best & Krieger's Environmental Law & Natural Resources practice group, where she counsels and defends both public agencies and private developers under complex state and federal environmental and land use laws, with a special emphasis on the California Environmental Quality Act. Jennifer started working at BBK in 2011, as a summer law clerk prior to her third year of law school. She currently splits her time between BBK's Orange County and Riverside offices.

Prior to obtaining her law degree, Jennifer worked for several years as a land use and environmental planning consultant. In that role, Jennifer primarily acted on behalf of private developers, helping to entitle large scale master planned developments throughout the Inland Empire and Coachella Valley.

Jennifer received her law degree from the University of California, Hastings College of the Law, where she was named Clinical Student of the Year in 2012 for her work successfully representing five low income residents in a civil lawsuit against their employer. Jennifer also holds a Master's Degree in Urban and Regional Planning from the University of California, Irvine, and a Bachelor's of Geography from San Francisco State University. Jennifer is a frequent speaker on environmental law and land use planning issues, a member of the American Institute of Certified Planners, and a LEED Accredited Professional.

Born in Des Moines, Iowa, Jennifer moved to the San Francisco Bay area in grade school, and Southern California after graduating college. Having always been interested in California history, Jennifer is a member of the Mission Inn Foundation, a nonprofit organization dedicated to the preservation of downtown Riverside's historic Mission Inn. In her free time, Jennifer can be found volunteering as a docent, giving tours of the Mission Inn and sharing Riverside's fascinating and unique history with visitors from around the world.



**NaKeshia Ruegg**  
*Director-at-Large*

NaKeshia Ruegg is the managing partner of Swanson & Ruegg, practicing family law in Riverside and San Bernardino counties. NaKeshia was born and raised in Riverside and though she moved to Milwaukee, Wisconsin to attend college at Marquette University, then attended law school at Chapman University, she quickly made her way back to Riverside and family law, which she has been practicing for the last 8 years. NaKeshia has been involved in and around the practice of law her entire life. Mary Swanson, her mother and partner at Swanson & Ruegg, began practicing in 1979 and retired from full time practice in 2006.

While at Marquette University, NaKeshia worked as a Court Appointed Special Advocate (CASA) for abused and neglected children in the Milwaukee juvenile court system. During law school she worked for family law attorneys in both Orange and Riverside counties, and earned highest honors in the areas



of family law and trial practice. After starting her own firm, Swanson & Ruegg, she began her involvement with the RCBA, serving as Family Law section chair in 2011. She participated with judicial officers and other members of the family law bar on a committee designed to assist our courts in implementing the recommendations of the “Elkins Task Force”; a statewide effort to address the volume of family law cases and pro per litigants and balance the limited resources with the increased demands for services within the family court system.

NaKesha also spent time as a volunteer with the Public Service Law Corporation and has spent the past several years judging mock trial competitions. In 2015, NaKesha and her husband David Ruegg, began serving as co-chairs of the Family Law section and have taken great strides in expanding the reach and involvement of the section and its members. Since taking over the family law section, NaKesha helped form the Inland Empire legislative committee that reviews and offers feedback to FLEXCOM, regarding pending family law legislation. This statewide group lacked input or involvement from the Inland Empire until the establishment of our legislative liaison. The committee is now involved in the statewide effort to ensure family law legislation addresses the needs of the state and now our county as well.

NaKesha’s spare time is spent with her husband and their three boys. She looks forward to the opportunity to expand her service to the entire RCBA.

**Dan Tripathi**  
*Director-at-Large*



Daniel J. Tripathi is the founder and managing attorney of Cal-Lawyer PLC, a full-service litigation firm serving the Inland Empire’s diverse legal needs from criminal defense to civil matters. Mr. Tripathi formed Cal-Lawyer PLC in 2016

when he incorporated his prior firm, The Law Offices of Daniel Tripathi, founded in 2006 that served the Inland Empire and surrounding communities for over a decade. Cal-Lawyer PLC—working in conjunction with a dozen of counsel attorneys—handles diverse matters in criminal, civil, real estate, probate, and business litigation.

Mr. Tripathi graduated from the University of Southern California with a Bachelor of Science in systems engineering and worked with a U.K. manufacturer, where he managed numerous engineers throughout the United States for five years. After years working in the private sector, Mr. Tripathi enrolled in Southwestern University School of Law’s prestigious SCALE program in Los Angeles—the only ABA-accredited two-year legal education program in the nation.

Upon graduating from the SCALE program, Mr. Tripathi returned to the private sector where he began his legal career in patent prosecution. However, the pull of the legal profession’s public service ethic, impressed upon him to change the trajectory of his legal career. The result: in early 2007, Mr. Tripathi used his legal skills, talents, and experience in the service of indigent criminal defendants in Riverside County. His service ethic to assist the public in navigating through the criminal justice system deepened after litigating countless number of criminal trials as an ardent advocate for his clients. Throughout his career, as a criminal defense lawyer, he represented indigent defendants

in an array of high-profile cases—and continued to do so, until 2013 when he decided to expand his burgeoning practice.

Since 2013, after transitioning his legal practice from exclusively doing criminal defense work, Daniel Tripathi broadened his practice to include areas involving civil litigation, both plaintiff- and defendant-side; probate and real estate law.

Thanks to his stellar and supportive staff, Mr. Tripathi’s legal career encompasses the successful representation of over a thousand clients. As a contributor to *Riverside Lawyer* magazine—in addition to being an active attendee of several RCBA section meetings—Mr. Tripathi is an engaged, participating member of the RCBA. And, Mr. Tripathi is further actively involved in Riverside County’s legal community where he serves the local needs through offering his services to the Lawyer Referral Service in a variety of diverse, legal matters.

Super Lawyers named him as a rising star, consecutively twice in 2014 and 2015. In 2016, Super Lawyers rated Mr. Tripathi as a top attorney for that year. For two years consecutively, in 2016 and 2017, Martindale-Hubbell awarded him with a pre-eminent AV rating as well as client distinction awards in 2013, 2014, and 2015. Despite these accolades, Mr. Tripathi considers his greatest achievements as being the husband to a remarkable wife of 14 years, and a proud father to three children.

Daniel Tripathi would consider it an honor to serve on the board of the RCBA and have the privilege to contribute his talents and his experiences in furthering the vital, crucial work that the RCBA does in providing a critical service to the community of Riverside County.



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