

# CALIFORNIA INSURANCE LAW & LITIGATION ALERT

Oct. 31, 2011

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## News & Filings

### Insurer removes \$2 million personal injury lawsuit to federal court

**Columbia Casualty Co.** is the defendant in a lawsuit alleging the insurer is liable for a \$2 million default judgment entered against its insured.

The lawsuit alleges that Columbia was the insurer for **Sierra Manor**, an elder care facility in Chico, Cal., that was the defendant in an underlying lawsuit alleging a resident, Emma Cartledge, suffered burn injuries while under the care of Sierra Manor.

A default judgment was entered against Sierra Manor in an amount just more than \$2 million. Cartledge's estate now seeks to recover that amount from Columbia. The lawsuit alleges that because Columbia was aware of the underlying suit and failed to set aside the default or settle the claim, it is liable to the estate for the full amount of the judgment.

**Estate of Cartledge v. Columbia Cas. Co.**, No. 11-2623 (E.D. Cal. *notice of removal filed* Oct. 5, 2011)

**Counsel for estate:** Albert J. Lenzi, **Zink & Lenzi**, 530-895-1234, Chico, Cal.

**Counsel for Columbia:** Steven M. Crane, Barbara S. Hodous, **Berkes Crane Robinson & Seal L.L.P.**, 213-955-1150, Los Angeles.

### House considers earthquake insurance bill

The U.S. House of Representatives is considering a measure entitled the Earthquake Insurance Affordability Act.

H.R. 3125, introduced by Rep. John Campbell, would increase the affordability of earthquake insurance by guaranteeing private market debt issued by state programs that offer catastrophic earthquake coverage. The Act would allow programs to replace some expensive reinsurance with other forms of debt to back up policies.

Currently, more than 75 million people live in regions that are prone to earthquakes. Less than 10% of all homes in California, Campbell's home state, are protected by insurance. The Senate is considering a similar measure—S.637—introduced by California Senator Dianne Feinstein.

## Legislation & Agency Actions

### Streamlining insurance processes

The governor of California approved a measure which streamlines state regulations with regard to agent licensing and training and administrative processes. The measure also authorized the insurance commissioner to remove a life agent's authority to transact variable life insurance contracts if the agent is not registered to transact securities with the U.S. SEC or the Financial Industry Regulatory Authority. The measure also clarifies bond requirements for agents who hold both property and casualty licenses. AB 1416

### Grant monies issued to combat auto insurance fraud

District attorneys in California will be receiving nearly \$23 million in grant funds to assist with investigation and prosecution of automobile fraud. So far, \$15.2 million has been distributed to 35 counties for regular auto insurance fraud programs, and another \$7.6 million was distributed to 10 counties for their organized auto fraud programs. The funds come from assessments to insurance companies based on the number of vehicles they insure, which the insurance commissioner is authorized by statute to collect.

### Unfair claims handling of long-term care policies

The California Insurance Department is taking enforcement action against **RiverSource Life Insurance Co.** The company allegedly engaged in unfair claims handling practices with regard to its long-term care policies. The company also allegedly failed to enact measures to ensure that benefits were promptly and properly paid. Instead, the company reportedly systematically delayed investigating claims and intentionally adopted practices designed to create impediments to the receipt of benefits.

### Grant money to implement healthcare reforms

California will be receiving nearly \$4.3 million to implement federal healthcare reforms, but the state is ineligible for other grant monies available to states with "prior approval" authority. The move highlights the need for the state to pass pending legislation which would authorize the insurance commissioner to reject excessive healthcare premiums,

**Strafford**

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co-pays or deductibles. The grant money will be used to improve rate review processes and increase transparency and public input. AB 52

**Woman arrested for workers’ comp fraud**

A California woman was charged with three counts of felony insurance fraud. An investigation led to allegations that Mia Rachel Brown filed a workers’ compensation claim against her employer in connection with injuries incurred during falls in October and November 2009. Although she appeared for deposition using a cane and denied having employment, an anonymous tip revealed that Brown had been employed by the DMV since May 2010 while receiving workers’ comp benefits. She faces up to seven years in prison.

sented the coverage of general liability insurance they had procured for Five Star in 2005 and 2006. Specifically, Five Star alleged the defendants committed fraud, negligence and breached their fiduciary duty in failing to secure policies with adequate coverage for open roof operations.

Five Star suffered losses in both policy years that were not fully covered by the policies. The trial court granted the defendants’ motions for summary judgment on the ground that Five Star could not produce evidence of alternate policies covering the open roof operations claims in question. Five Star appealed.

The court of appeal affirmed the trial court’s judgment. In so ruling, the court of appeal agreed with the defendants that Five Star could not prove that it could have found full coverage at the time the two policies in question were placed so that the injury—lack of coverage—could have been avoided. It was possible to infer Five Star might have obtained a policy with some open roof coverage for the 2005 policy year since Casswood was able to secure such a policy just seven months after the December 2005 loss. However, Five Star conceded it viewed that policy, too, as unacceptable.

Five Star cited *Greenfield v. Insurance Inc.*, 19 Cal.App.3d 803, in support of its argument that the court of appeal could infer from the evidence in the record that an alternate policy would have been available. The court of appeal rejected Five Star’s reliance on this decision because in that case the plaintiff had actually secured the alternative coverage within a few days of being told he was not covered. The record in Five Star’s case contained no similar evidence.

**Counsel for KAC3:** John A. Shepardson, 408-395-3701, Los Gatos, Cal.

**Counsel for Casswood:** G. Dennis Rodgers, **Cresswell Echeguren Rodgers & Noble**, 510-444-1735, Oakland, Cal.

**Court Decisions**

**Agents**

<b>Misrepresentation</b>	<b>Business Liability</b>
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**Insured fails to show evidence of alternate policies to avoid fraud suit dismissal**

**KAC3 Enters. Inc. v. Casswood Ins. Agency**, Nos. H035974, H036061 (Cal. Ct. App. Sept. 8, 2011) *unpublished*

The California Court of Appeal ruled that insurance agents are entitled to summary judgment on an insured’s claims of fraud, negligence and breach of fiduciary duty where the insured could not produce evidence of alternate insurance policies that would have been available during the relevant time periods.

**KAC3 Enterprises Inc.**, d/b/a **Five Star Roofing**, sued **Casswood Insurance Agency Ltd.** and Manuel Angel alleging the defendants had negligently or fraudulently mispre-

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## Arbitration

Evidence	Title
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### \$600,000 Arbitration award against title insurer in coverage dispute upheld

**First Am. Title Ins. Co. v. Ordin**, No. B226671 (Cal. Ct. App. Sept. 14, 2011) *unpublished*

The California Court of Appeal ruled that a trial court committed no error in issuing arbitration awards against a title insurer regarding a coverage dispute despite the insurer's allegation of arbitrator misconduct. The court held that no misconduct was committed and no prejudice occurred.

On May 1, 2002, **First American Title Insurance Co.** issued a title insurance policy to David and Batya Ordín in connection with their purchase of property on Hortense Street in Studio City, Cal. On May 10, 2002, the Ordíns transferred title in the property to **Claremont Investments Inc.**, a corporation of which they were the sole shareholders. On Apr. 6, 2004, Claremont conveyed title to the Ordíns as trustees of the family trust. On Aug. 25, 2005, the Ordíns, as trustees of their family trust, transferred title in both parcels to **Ranchito Development L.L.C.**, a limited liability company of which they were the sole members.

On June 9, 2006, Claremont (through David Ordín) entered into an agreement to sell the property to Allison and Christopher Simmons for \$1.475 million. In June 2006, the Ordíns discovered a neighbor's house encroached onto their property. When the Simmons refused to complete the purchase because the neighboring house encroached onto the Ordíns' property, the Ordíns submitted a claim under the title insurance policy that resulted in First American tendering \$5,000 to the Ordíns.

On Dec. 22, 2006, the Ordíns sold the property for \$1.255 million. They claimed an actual loss of \$244,291 plus carrying costs of \$50,707, relying on a report prepared by another appraiser in May 2007. That appraiser concluded the diminution in value of the property caused by the encroachments and decline in the local housing market between June and December 2006, was \$220,000, plus carrying costs of \$87,330.

The parties agreed to arbitration. The arbitrator found the defendants were covered under the policy and issued arbitration awards in favor of the defendants in excess of \$600,000. First American filed a petition to vacate the awards on arbitrator misconduct grounds, arguing the arbitrator unfairly refused to hear material evidence. The trial court granted the defendants' petition to confirm the arbitration awards and denied First American's petition to vacate the awards. First American appealed.

**Arbitration awards did not substantially prejudice insurer.** The court of appeal affirmed the trial court's judgment. First American contended the arbitration awards should be vacated because it was substantially prejudiced by the arbitrator's refusal to hear relevant evidence before issuing the awards. First American also argued the trial court com-

pounded the error by declining to determine prejudice had resulted by the arbitrator's conduct.

The court of appeal found the Ordíns were covered under the First American title policy as trustees of their family trust and all of First American's arguments concerning prejudice and the relevance of the matters the arbitrator declined to consider were unsubstantiated. Even if the arbitrator had accepted the plaintiff's arguments and found the defendants were not covered under the policy as trustees of their family trust, based on the record, the awards would still stand. The arbitrator found the defendants were covered under two separate sections of the policy given "the totality" of the evidence. Accordingly, there could be no prejudice to First American since there was an additional, separate basis to support the arbitrator's coverage finding.

**Counsel for First Am.:** Ryan C. Squire, Zi C. Lin, **Garrett & Tully**, 626-577-9500, Pasadena, Cal.

**Counsel for Ordín:** John L. Hosack, **Buchalter Nemer**, 213-891-5080, Los Angeles; Robert M. Dato, **Buchalter Nemer**, 949-224-6245, Irvine, Cal.

## Bad Faith

Settlements	Excess
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### Excess insurer's delay in settling underlying action may have been in bad faith

**Allied Framers Inc. v. Golden Bear Ins. Co.**, No. A129733 (Cal. Ct. App. Sept. 16, 2011) *unpublished*

The California Court of Appeal determined that an insured's arguments that its excess insurer unreasonably delayed in settling an underlying action were sufficient to state a bad faith claim.

**Golden Bear Insurance Co.** issued an excess liability policy to **Allied Framers Inc.** Section III of the policy stated: "The Company [i.e., Golden Bear] shall not be obligated to investigate, defend or settle any claim or suit against the Insured, but the Company shall have the right and shall be given the opportunity to associate with the Insured or its underlying insurers, or both, in the investigation, defense or settlement of any claim or suit which, in the opinion of the Company, involves or appears reasonably likely to involve the Company."

On Oct. 25, 2003, a construction defect action was filed against Allied (the Ryland action). Because Allied's primary carrier was insolvent, the California Insurance Guarantee Association (CIGA) provided and paid for Allied's defense until June 8, 2006. CIGA retained the law firm of **Gray Duffy L.L.P.** to defend Allied.

In March 2006, Gray Duffy informed Allied that CIGA likely would stop paying for Allied's defense. On Apr. 4, 2006, Allied tendered defense of the Ryland action to Golden Bear. On Apr. 18, 2006, Golden Bear acknowledged Allied's tender, but declined to provide coverage based on its understanding that Allied had not yet exhausted its primary insurance.

On May 11, 2006, counsel for Ryland wrote to Golden Bear and demanded the policy limits in settlement. On July 27, 2006, Golden Bear attended a mandatory settlement conference and

offered to pay \$500,000 on behalf of Allied to settle the Ryland action. Ryland rejected the offer. The parties subsequently reached a settlement of the Ryland action on Aug. 21, 2006.

In November 2008, Gray Duffy informed Allied that it owed Gray Duffy \$86,000 in unpaid fees incurred in the Ryland action. When Allied refused to pay, Gray Duffy sued Allied. Allied cross-complained against Gray Duffy and Golden Bear asserting breach of the covenant of good faith and fair dealing based primarily on Golden Bear's failure to settle the Ryland action earlier than it did. The trial court sustained a demurrer to Allied's cross-complaint, and Allied appealed.

**Insurer has no duty to initiate settlement negotiations.** The court of appeal affirmed in part and reversed in part the trial court's judgment. Allied failed to state a cause of action for breach of the implied covenant of good faith and fair dealing as to Golden Bear's failure to initiate settlement efforts upon receipt of Allied's initial tender. The provision specifying that Golden Bear "shall not be obligated to investigate, defend or settle" any claim is consistent with the rule that an excess carrier ordinarily is not obligated to initiate settlement negotiations or explore settlement options. Accordingly, before Golden Bear received Ryland's May 11, 2006, settlement demand, it had no express or implied duty to seek to settle the Ryland action.

However, because the policy did not unambiguously negate Golden Bear's duty to act in good faith upon receipt of a settlement demand, Allied stated a cause of action for breach of the implied covenant of good faith and fair dealing following Golden Bear's receipt of Ryland's demand. Thus, Allied stated a cause of action for breach of the implied covenant as to: (1) Golden Bear's alleged failure to act in good faith in considering Ryland's May 11, 2006, settlement demand, and (2) Golden Bear's alleged failure to act in good faith in conducting settlement negotiations after it became involved in the defense and settlement of the Ryland action.

**Counsel for Allied:** Joseph Louis Oliva, **Oliva & Assocs.**, 858-385-0491, San Diego.

**Counsel for Golden Bear:** James Ira Silverstein, **Yaron & Assocs.**, 415-658-2929, San Francisco.

## Breach of Contract

### Bad Faith

### Title

#### Notice of parcel merger not disclosed on title report not covered under policy

**Dollinger DeAnza Assocs. v. Chicago Title Ins. Co.**, No. H035576 (Cal. Ct. App. Sept. 9, 2011) *unpublished*

The California Court of Appeal ruled that a notice of merger not disclosed by an insurer, which stated that seven parcels were merged into one parcel, did not constitute "a matter affecting title to the land ... which would entitle a purchaser ... to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title."

In 2004, **Dollinger DeAnza Associates** purchased real property in Cupertino, Cal., that it believed was divided into

seven parcels, with the intention of selling parcel seven. In conjunction with the purchase, Dollinger obtained a title insurance policy from **Chicago Title Insurance Co.**

Dollinger later entered into an agreement to sell parcel seven, but the sale was not completed because the purchaser, **Pacific Peninsula Group**, withdrew after learning that the city of Cupertino had recorded a notice of merger in 1984 that stated all seven parcels were merged into a single parcel. The notice of merger was not included in Chicago Title's title report.

Dollinger tendered a claim under the Chicago Title policy due to the failed sales transaction for parcel seven. Chicago Title initially denied Dollinger's claim under the wrong policy, then accepted the claim under the policy that Dollinger had actually purchased. Chicago Title subsequently determined that Dollinger's claim was not covered.

Dollinger then brought against Chicago Title that included causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief. The trial court granted Chicago Title's motion for summary judgment, determining Chicago Title's policy did not provide coverage for Dollinger's claim and Chicago Title was not equitably estopped from denying coverage due to its post claim conduct. Dollinger appealed.

**Insured's breach of contract cause of action lacks merit.** The court of appeal affirmed the trial court's judgment. The Chicago Title policy did not provide coverage for Dollinger's claim under the unmarketability of the title coverage provision. Thus, Dollinger's cause of action for breach of contract based on Chicago Title's denial of coverage lacked merit as a matter of law.

The court of appeal also found Dollinger failed to make an evidentiary showing of detrimental reliance justifying an application of estoppel doctrine. Moreover, since the court determined as a matter of law that the Chicago Title policy provided no coverage for Dollinger's claim arising from the notice of merger, it also determined as a matter of law that Dollinger's cause of action for breach of the implied covenant of good faith and fair dealing lacked merit as a matter of law.

**Counsel for Dollinger:** Robert R. Moore, Nicholas Augustine Subias, **Allen Matkins Leck Gamble Mallory & Natsis L.L.P.**, 415-837-1515, San Francisco.

**Counsel for Chicago Title:** Scott Dallas Noble, 925-930-9550, Walnut Creek, Cal.; Linnea Brown, **Temkin Wielga & Hardt L.L.P.**, 303-382-2901, Denver; Dena Marie Cruz, **Holme Roberts & Owen L.L.P.**, 415-268-1975, San Francisco.

### Potentiality of Coverage

### Farm

#### Disparagement claim did not arise from insureds' usual operations

**Tocher v. Sequoia Ins. Co.**, No. C066390 (Cal. Ct. App. Sept. 15, 2011) *unpublished*

The California Court of Appeal affirmed a trial court's judgment in favor of a liability insurer in an action brought by its insureds seeking coverage of a third-party claim filed against the insureds alleging breach of a land use lease agree-

ment. The underlying claim did not arise out of operations usual or incidental to the insureds' "farming" operations as required to trigger policy coverage.

G. Neil and Missy Ann Tocher, d/b/a **Lone Rancher Enterprises**, owned a 547-acre farm and cattle ranch near Whitmore, Cal. On Sept. 25, 2007, the Tochers entered into a 45-year lease and land use agreement with **Shasta View Inc.** for the lease of water conveyance facilities, penstock, powerhouse and transmission lines existing on the Tochers' property for the purpose of generating and selling electricity for the mutual profit of Shasta and the Tochers.

**Sequoia Insurance Co.** issued a policy to the Tochers covering farming operations on the property, and describing the Tochers' business as "Grazing Land Leased to Others."

A dispute arose between Shasta and the Tochers as to whether Shasta was performing its work in compliance with applicable regulations. The Tochers sued Shasta for breach of the lease agreement, and Shasta counterclaimed seeking specific performance, or in the alternative, \$3.9 million in damages.

The Tochers tendered defense and indemnity of the counterclaim to Sequoia. Sequoia disclaimed coverage, and the Tochers sued Sequoia for breach of contract. A trial court granted summary judgment in Sequoia's favor, and the Tochers appealed.

**Third-party claim did not related to insureds' usual operations.** The court of appeal rejected the Tochers' contention that Shasta View stated a "personal injury" claim triggering policy coverage because it alleged that the Tochers disparaged Shasta View's performance under the lease agreement in order to interfere with Shasta View's efforts to complete its work.

Even assuming that this counterclaim asserted disparagement of Shasta View's goods, products or services and, thus, constituted a claim for personal injury under the Sequoia policy, the court found that the Tochers were also required to establish that the alleged disparagement arose out of operations usual or incidental to the Tochers' "farming" operations. The court of appeal concluded that the Tochers were not able to support such a claim on the record and, accordingly, the trial court's judgment was affirmed.

**Counsel for the Tochers:** Jon Steven Brick, **Greco Trafficante Schulz & Brick**, 877-808-1012, San Diego.

**Counsel for Sequoia:** Danielle Allison Arteaga, **Archer Norris**, 925-930-6600, Walnut Creek, Cal.

## Potentiality of Coverage

ERISA

Disability

### Disability insurer improperly recalculated claimant's benefits

**Elliot v. Elliot Leibl & Snyder L.L.P. LTD Plan**, No. 09-56730 (9th Cir. Sept. 21, 2011) *unpublished*

The Ninth U.S. Circuit Court of Appeals ruled that a disability insurer abused its discretion in recalculating a claimant's benefits to account for a retroactive Social Security disability (SSD) benefit award.

Under the **Elliot Leibl & Snyder L.L.P.** long-term disability (LTD) plan, David Elliot was eligible to receive the maximum benefit payable—\$10,000 per month—exclusive of annual cost of living adjustments (COLA) after becoming permanently disabled. COLA adjustments occurred annually on the anniversary date of Elliot's benefit eligibility, December 20th. The amount payable to Elliot in the subsequent year was determined by multiplying a COLA "factor" by the benefit then payable to Elliot.

Elliot applied for SSD benefits from the Social Security Administration on Mar. 12, 2004. In June 2006, he received an award of SSD benefits retroactive to February 2003. The award totaled \$72,954, for the period from February 2003 through April 2006. Following this lump-sum retroactive award from SSD, the plan's insurer, **Unions Security Insurance Co.** (USIC), recalculated the benefits it had conferred upon Elliot from February 2003 onwards.

This recalculation resulted in a permanent reduction of Elliot's benefits going forward and the determination that USIC was entitled to "claw back" \$79,384 in benefits paid to Elliot between 2003 and 2006. This \$79,384 clawback was greater than the \$72,954 retroactive SSD award Elliot had received.

Elliot brought an action against the plan and USIC. He did not dispute the fact that USIC was entitled to a clawback, but contested that the clawback was greater than his retroactive SSD award. Specifically, he took issue with the methodology by which USIC recalculated his benefits beginning in February 2003 to arrive at this greater clawback amount and the permanent reduction of his benefits going forward. The district court agreed with USIC's calculation, and Elliot appealed.

The Ninth Circuit reversed the district court's judgment and remanded the case. Because the ERISA plan in this case conferred unambiguous discretionary authority on USIC to determine plan benefits, USIC's decisions regarding plan benefits were reviewed for an abuse of discretion. Under this standard, the Ninth Circuit found the calculation employed by USIC was arbitrary and capricious, and to the extent that USIC construed the terms of the policy to justify that result, it constituted an abuse of discretion that deprived USIC of the deference in interpreting its own policy language to which it would otherwise be entitled.

**Counsel for Elliot:** Lawrence David Rohlfing, 562-219-2861, Santa Fe Springs, Cal.

**Counsel for Elliot Leibl:** Linda M. Lawson, James J. Moak, **Meserve Mumper & Hughes L.L.P.**, 213-620-0300, Los Angeles; Simon Manoucherian, 323-227-7685, Los Angeles.

## Premiums

Class Action

Workers' Comp

### Policyholder is not entitled to interest on deposit premium paid to insurer

**Flahavan v. State Comp. Ins. Fund**, No. A128280 (Cal. Ct. App. Sept. 1, 2011) *unpublished*

The California Court of Appeal ruled that a policyholder is not entitled to interest on a deposit premium paid to a statutory workers' compensation insurer where the insurer had no interest in the deposit sufficient to compel payment of interest.

William Flahavan brought an action on behalf of himself, individually, and on behalf of all persons similarly situated against the California Compensation Insurance Fund (the Fund). Flahavan challenged the Fund's practice of not paying interest on a "deposit premium" that it charged when a party obtained a policy for workers' compensation insurance from it. After the policy ended, if some deposit premium remained on the account, the Fund refunded the excess but retained the interest earned on the revenue. The policy was silent regarding the payment of interest.

The trial court granted summary judgment in favor of the Fund. It determined the Fund had no obligation to pay policyholders interest. Flahavan appealed from the judgment and claimed that the language of the policy and the common law rule that interest follows principal created an obligation to pay interest on the "deposit premium."

The court of appeal affirmed the trial court's judgment. Flahavan could not establish a property interest in the deposit; Flahavan voluntarily provided the funds to the Fund; and Flahavan had no reasonable expectation that the entire deposit would be returned to him. In such a context, where the contract is completely silent on the subject of interest on the "deposit premium," the depositor is not entitled to any interest on the deposit and can derive no benefit from the maxim that interest follows principal.

**Counsel for Flahavan:** John Alexander Kelly, 707-935-6100, Sonoma, Cal.; Walter John Lack, Paul Allan Traina, Gregory Paul Waters, **Engstrom Lipscomb & Lack**, 310-552-3800, Los Angeles; James Tynan Kelly, 713-888-1809, Houston.

**Counsel for the Fund:** Gregory Alan Long, Sascha Von Mende Henry, Mohammad Keshavarzi, Paul Lyman Seeley, **Sheppard Mullin Richter & Hampton**, 213-620-1780, Los Angeles.

## Law Journals

### Examining changes required in marine insurance policies as a result of increased Somali pirate attacks

Laura L. Hardy, *Ordering Chaos at Sea: Preparing for Somali Pirate Attacks through Pragmatic Insurance Policies*, 55 St. Louis U. L.J. 665 (2011)

Since 2006, the number of attempted and successful attacks by Somali pirates has increased substantially in the Gulf of Aden, a common shipping route used to transport oil. Unlike traditional pirates, Somali pirates threaten human lives and demand ransom payments. Because this is a new form of piracy, it is unclear where or how it is covered in marine insurance policies. Laura L. Hardy outlines the international response to piracy off the coast of Somalia and recommends ways that insurers can best protect their clients' interests when contracting for voyages in that area.

There are several steps that insurers can take to revise marine policy clauses in order to clarify coverage with respect to piracy. Since each venture poses a unique set of risks, insureds must have the ability to select the necessary coverage by picking and choosing from existing policy language. The term piracy should be redefined to include hostile acts against the ship or her crew for the purpose of extorting money, not just traditional hostile acts against the ship to procure the goods onboard. In addition, insurers could offer a specific Gulf of Aden clause providing special coverage for kidnapping and ransom demands. This clause would pass the costs on to those who desire to use the Gulf of Aden for travel despite the additional risks of doing so.

Paying ransom should be considered a last resort because it validates the pirates' actions and is condemned by the United Nations. However, the constant threat to human life makes paying ransoms difficult to resist. Although the United States, as a member of the United Nations, cannot condone paying ransoms, some sort of temporary government fund could help alleviate the high cost of insuring against such attacks and keep sea traffic moving through the shortest travel routes.

Insurers also could require certain behaviors or procedures before negotiating with pirates in order to incentivize preparation and competence among their clients. For example, insurers could require that ship management take anti-piracy courses and show that they were traveling in the internationally recommended transit corridor before meeting any ransom demands made by Somali pirates.

Somali pirates have created uncertainty within the marine insurance industry. Insurers should anticipate the worst and clarify language in marine insurance policies to explicitly provide for who is to pay what and when. The author contends that insurers could accomplish risk and cost spreading more efficiently with better-tailored and more specific policies.

## Docket★Trak™ - Part I

# Insurance Plaintiffs

Original Declaratory Actions Filed in the Federal District Courts By Insurance Companies

Insurance Company Plaintiffs	Citation	Counsel
Am. W. Home Ins. Co.	<b>Am. W. Home Ins. Co. v. Cano</b> , No. 11-CV-7765 (C.D. Cal. filed 9/20/11)	For Am. W. Home Ins. Co.: Brent R. Phillips, <b>Phillips Law Corp.</b> /Orange, Cal., 714-474-4497
	<b>Am. W. Home Ins. Co. v. Rivera</b> , No. 11-CV-8177 (C.D. Cal. filed 10/3/11)	For Am. W. Home Ins. Co.: Brent R. Phillips, <b>Phillips Law Corp.</b> /Orange, Cal., 714-474-4497
Argonaut Ins. Co.	<b>Argonaut Ins. Co. v. Elite Home Med. &amp; Respiratory Inc.</b> , No. 11-CV-1445 (C.D. Cal. filed 9/19/11)	For Argonaut Ins. Co.: Bruce T. Smyth, <b>Charlston Revic &amp; Wollitz L.L.P.</b> /Los Angeles, 310-551-7055
Great W. Cas. Co.	<b>Great W. Cas. Co. v. Molinar</b> , No. 11-CV-7769 (C.D. Cal. filed 9/20/11)	For Great W. Cas. Co.: Lawrence G. Lossing, <b>Lossing &amp; Elston</b> /San Francisco, 415-882-4200
James River Ins. Co.	<b>James River Ins. Co. v. Mapco Constr. Inc.</b> , No. 11-CV-7947 (C.D. Cal. filed 9/26/11)	For James River Ins. Co.: Jonathan B. Cole, <b>Nemecek &amp; Cole A.P.C.</b> /Sherman Oaks, Cal., 818-788-9500
Md. Cas. Co.	<b>Md. Cas. Co. v. Padilla</b> , No. 11-CV-2263 (S.D. Cal. filed 9/29/11)	For Md. Cas. Co.: Dale A. Amato, <b>Berger Kahn</b> /San Diego, 858-547-0075
Nat'l Cont'l Ins. Co.	<b>Nat'l Cont'l Ins. Co. v. Williamsburg Nat'l Ins. Co.</b> , No. 11-CV-8125 (C.D. Cal. filed 9/30/11)	For Nat'l Cont'l Ins. Co.: Stephenn M. Smith, <b>Yocis &amp; Cox</b> /Long Beach, Cal., 562-437-9797
Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.	<b>Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Elec. Arts Inc.</b> , No. 11-CV-4897 (N.D. Cal. filed 10/4/11)	For Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.: Gary R. Selvin, <b>Selvin Wraith Halman L.L.P.</b> /Oakland, Cal., 510-874-1811
Scottsdale Ins. Co.	<b>Scottsdale Ins. Co. v. Harris</b> , No. 11-CV-2245 (S.D. Cal. filed 9/27/11), <i>Other Parties: Menifee Master Ass'n (D)</i>	For Scottsdale Ins. Co.: Linda Wendell Hsu, <b>Selman Breitman L.L.P.</b> /San Francisco, 415-979-0400
Travelers Prop. Cas. Co. of Am.	<b>Travelers Prop. Cas. Co. of Am. v. Lennar Renaissance Inc.</b> , No. 11-CV-2643 (E.D. Cal. filed 10/6/11)	For Travelers Prop. Cas. Co. of Am.: Abel E. Aguilera, <b>Bohm Matsen Kegel &amp; Aguilera, L.L.P.</b> /Costa Mesa, Cal., 714-384-6500

Source: *Insurance Law & Litigation Week* research. (P) = plaintiff, (D) = defendant.

## Docket★Trak™ - Part II

# Insurance Defendants

Original Declaratory Actions Filed in the Federal District Courts By Insurance Companies

Insurance Company Defendants	Citation	Counsel
Chicago Title Ins. Co.	<b>Cohon v. Chicago Title Ins. Co.</b> , No. 11-CV-8114 (C.D. Cal. filed 9/29/11)	For Bennett B. Cohon: Henry Nicholls, <b>Cohon &amp; Pollak L.L.P.</b> /Los Angeles, 310-231-4470
Clarendon Am. Ins. Co.	<b>Guerneville Bus. Corp. Inc. v. Boasberg</b> , No. 11-CV-4913 (N.D. Cal. filed 10/4/11), <i>Other Parties: Clarendon Am. Ins. Co. (D)</i>	For Guerneville Bus. Corp., Inc.: Ray K. Shahani, San Mateo, Cal., 650-348-1444
Liberty Surplus Ins. Corp.	<b>Munchkin Inc. v. Liberty Surplus Ins. Corp.</b> , No. 11-CV-8252 (C.D. Cal. filed 10/4/11)	For Munchkin Inc.: Caroline R. Hurtado, <b>Anderson Kill Wood &amp; Bender P.C.</b> /Venture, Cal., 805-288-1300
Principal Life Ins. Co.	<b>Petersen v. Principal Life Ins. Co.</b> , No. 11-CV-1595 (C.D. Cal. filed 10/4/11)	For Joseph Petersen: Glenn R. Kantor, <b>Kantor &amp; Kantor L.L.P.</b> /Northridge, Cal., 818-886-2525
Prudential Ins. Co. of Am.	<b>Freeman v. Prudential Ins. Co. of Am.</b> , No. 11-CV-8055 (C.D. Cal. filed 9/28/11)	For Lysette Freeman: Alan E. Kassan, <b>Kantor &amp; Kantor L.L.P.</b> /Northridge, Cal., 818-886-2525
State Farm Gen. Ins. Co.	<b>Forest Meadows Owners Ass'n v. State Farm Gen. Ins. Co.</b> , No. 11-CV-1642 (E.D. Cal. filed 9/28/11)	For Forest Meadows Owners Ass'n: Clifford E. Hirsch, <b>Hirsch Closson McMillan &amp; Schroeder</b> /Walnut Creek, Cal., 925-935-9800
Sun Life Assur. Co. of Canada	<b>Garber v. Sun Life Assur. Co. of Canada</b> , No. 11-CV-8080 (C.D. Cal. filed 9/29/11), <i>Other Parties: Axiom Int'l Inc. Group Employee Benefit Plan (D)</i>	For Ronald Garber: Michael B. Horrow, <b>Donahue &amp; Horrow L.L.P.</b> /El Segundo, Cal., 310-322-0300
UNUM Life Ins. Co. of Am.	<b>Shartsis v. UNUM Life Ins. Co. of Am.</b> , No. 11-CV-1551 (C.D. Cal. filed 10/6/11)	For Charles Shartsis: Jeffrey C. Metzger, <b>Law Offices of Jeffrey C. Metzger</b> /Laguna Hills, Cal., 949-454-1196
Williamsburg Nat'l Ins. Co.	<b>Nat'l Cont'l Ins. Co. v. Williamsburg Nat'l Ins. Co.</b> , No. 11-CV-8125 (C.D. Cal. filed 9/30/11)	For Nat'l Cont'l Ins. Co.: Stephenn M. Smith, <b>Yocis &amp; Cox</b> /Long Beach, Cal., 562-437-9797

Source: *Insurance Law & Litigation Week* research. (P) = plaintiff, (D) = defendant.

## Docket★Trak™ - Part III

# Transfers Into Federal Courts

### Declaratory Actions Transferred Into The Federal District Courts

Insurance Company Parties	Citation	Court Of Original Filing	Counsel
<b>Allied Prop. &amp; Cas. Ins. Co.</b>	<b>Encino Petroleum Inc. v. Allied Prop. &amp; Cas. Ins. Co.</b> , No. 11-CV-8122 (C.D. Cal. filed 9/30/11)	Cal. Super. Ct., Los Angeles Cty., No. LC094534	For Allied Prop. & Cas. Ins. Co.: Allan S. Cohen, <b>Stroock Stroock &amp; Lavan L.L.P.</b> /Los Angeles, 310-556-5800; Encino Petroleum Inc.: Michael P. Kade, <b>Michael P. Kade Law Offices</b> /Los Angeles, 310-481-9949
<b>Allied World Assur. Co.</b>	<b>Shore to Shore Props. L.L.C. v. Allied World Assur. Co. Holdings A.G.</b> , No. 11-CV-1619 (E.D. Mo. filed 9/19/11), <i>Other Parties: Allied World Assur. Co. (D); S2S Sunswept Assocs. L.L.C. (P)</i>	U.S.D.C., N.D. Cal., No. 11-CV-01512	For Allied World Assur. Co. Holdings A.G.: Maryam Gilak, <b>McCurdy &amp; Fuller L.L.P.</b> /Menlo Park, Cal., 650-618-3500; For Shore to Shore Props. L.L.C.: Alan C. Milstein, <b>Sherman Silverstein Kohl Rose &amp; Podolsky P.A.</b> /Moorestown, N.J., 856-662-0700
<b>Allstate Indem. Co.</b>	<b>Klein v. Allstate Indem. Co.</b> , No. 11-CV-4951 (N.D. Cal. filed 10/6/11), <i>Other Parties: Allstate Ins. Co. (D); Allstate Ins. Co. of Cal. (D)</i>	Cal. Super. Ct., Alameda Cty., No. RG11591116	For Allstate Indem. Co.: Jone Tran, <b>SNR Denton U.S., L.L.P.</b> /Walnut Creek, Cal., 925-949-2600; For Mark Klein: Shawn Ridgell, <b>Ridgell &amp; Lawlor L.L.P.</b> /Oakland, Cal., 510-986-1300
<b>Allstate Ins. Co.</b>	<b>White v. Allstate Ins. Co.</b> , No. 11-CV-7725 (C.D. Cal. filed 9/19/11)	Cal. Super. Cty., Los Angeles Cty., No. SC113923	For Allstate Ins. Co.: Peter H. Klee, <b>Luce Forward Hamilton &amp; Scripps L.L.P.</b> /San Diego, 619-236-1414; For Marjorie White: Neil S. Steiner, <b>Steiner &amp; Libo</b> /Beverly Hills, Cal., 310-273-7778
<b>Bankers Standard Ins. Co.</b>	<b>Safir v. Bankers Standard Ins. Co.</b> , No. 11-CV-7921 (C.D. Cal. filed 9/23/11)	Cal. Super. Ct., Los Angeles Cty., No. BC468334	For Bankers Standard Ins. Co.: Andrea Bednarova, <b>Foran Glennon Palandech Ponzi &amp; Rudloff P.C.</b> /Emeryville, Cal., 510-740-1500; For Andrew Safir: Michael J. O'Connor, <b>Kelley Drye &amp; Warre L.L.P.</b> /Los Angeles, 310-712-6100
<b>Certain Underw'rs at Lloyd's, London</b>	<b>Alvarado v. Certain Underw'rs at Lloyd's, London</b> , No. 11-CV-4957 (N.D. Cal. filed 10/7/11)	Cal. Super. Ct., Marin Cty., No. CIV 1104445	For Certain Underw'rs at Lloyd's, London: Michael L. Fox, <b>Sedgwick L.L.P.</b> /San Francisco, 415-781-7900; For Michael Alvarado: Jeffrey A. Feldman, San Francisco, 415-391-8888
<b>Columbia Cas. Co.</b>	<b>Estate of Cartledge v. Columbia Cas. Co.</b> , No. 11-CV-2623 (E.D. Cal. filed 10/5/11)	Cal. Super. Ct., Cty. of Butte, No. 154707	For Columbia Cas. Co.: Barbara S. Hodous, <b>Berkes Crane Robinson &amp; Seal L.L.P.</b> /Los Angeles, 213-955-1150; For Estate of Cartledge: Albert J. Lenzi, <b>Zink &amp; Lenzi</b> /Chico, Cal., 530-895-1234
<b>Hartford Cas. Ins. Co.</b>	<b>Benson v. Hartford Cas. Ins. Co.</b> , No. 11-CV-2275 (S.D. Cal. filed 9/30/11)	Cal. Super. Ct., San Diego Cty., No. 37-02011- 0094610	For Hartford Cas. Ins. Co.: Ann K. Johnston, <b>Berger Kahn</b> /Novato, Cal., 415-899-1770; For Larry K. Benson: David W. Baumgarten, <b>Yale &amp; Baumgarten</b> /San Diego, 619-220-8790
<b>Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.</b>	<b>24 Hour Fitness USA Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.</b> , No. 11-CV-8088 (C.D. Cal. filed 9/29/11)	U.S.D.C., N.D. Cal., No. 11-CV-02695	For Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.: Marc J. Derewetzky, <b>Morison Holden Derewetzky &amp; Prough</b> /Walnut Creek, Cal., 925-937-9990; For 24 Hour Fitness USA Inc.: Marion B. Adler, <b>Rachlis Durham Duff Adler &amp; Peel L.L.C.</b> /Chicago, 312-733-3957
<b>Navigators Ins. Co.</b>	<b>Sanchez v. Navigators Ins. Co.</b> , No. 11-CV-8310 (C.D. Cal. filed 10/6/11)	Cal. Super. Ct., Los Angeles Cty., No. BC468586	For Navigators Ins. Co.: Calvin S. Whang, <b>Clausen Miller P.C.</b> /Irvine, Cal., 949-260-3100; For Carmen Sanchez: Jonathan D. Winters, <b>Jonathan Winters Law Offices</b> /Long Beach, Cal., 562-497-0472
<b>Phil. Indem. Ins. Co.</b>	<b>Phila. Indem. Ins. Co. v. Golden Eagle Ins. Corp.</b> , No. 11-CV-7842 (C.D. Cal. filed 9/22/11), <i>Other Parties: Navigators Specialty Ins. Co. (D); Travelers Prop. Cas. Co. of Am. (D); Zurich Am. Ins. Co. (D); Netherlands Ins. Co. (D)</i>	Cal. Super. Ct., Los Angeles Cty., No. BC466770	For Phila. Indem. Ins. Co.: Joshua Nejemy, <b>Robinson Di Lando A.P.L.C.</b> /Los Angeles, 213-229-0100; For Navigators Specialty Ins. Co.: Gary J. Lorch, <b>Gordon &amp; Rees L.L.P.</b> /Los Angeles, 213-576-5000
<b>Reliastar Life Ins. Co.</b>	<b>Mandle v. Reliastar Life Ins. Co.</b> , No. 11-CV-1630 (E.D. Cal. filed 9/23/11)	Cal. Super. Ct., Fresno Cty., No. 11CEG02807	For Reliastar Life Ins. Co.: Jay A. Christofferson, <b>McCormick Barstow Sheppard Wayte &amp; Carruth L.L.P.</b> /Fresno, Cal., 559-433-2324; For Constance Mandle: James H. Wilkins, <b>Wilkins Droishagen &amp; Czeshinski</b> /Fresno, Cal., 559-438-2390
<b>Safeco Ins. Co. of Am.</b>	<b>Puric v. Safeco Ins. Co. of Am.</b> , No. 11-CV-2566 (E.D. Cal. filed 9/29/11), <i>Other Parties: First Nat'l Ins. Co. of Am. (D)</i>	Cal. Super. Ct., Amador Cty., No. 11-CV-7307	For Safeco Ins. Co. of Am.: Frank Falzetta, <b>Sheppard Mullin Richter &amp; Hampton L.L.P.</b> /Los Angeles, 213-620-1780; For Michael Puric: Wes Sage, Jackson, Cal., 209-418-8231
<b>Scottsdale Ins. Co.</b>	<b>McGrane v. Scottsdale Ins. Co.</b> , No. 11-CV-4811 (N.D. Cal. filed 9/28/11)	Cal. Super. Ct., Santa Clara Cty., No. 111CV207492	For Scottsdale Ins. Co.: Jeffrey B. Soderborg, <b>Selman Breitman L.L.P.</b> /San Francisco, 415-979-2064; For Jeri L. McGrane: Stuart D. Kirchick, San Jose, Cal., 408-291-0123
<b>Travelers Prop. Cas. Co. of Am.</b>	<b>Connolly v. Travelers Prop. Cas. Co. of Am.</b> , No. 11-CV-4726 (N.D. Cal. filed 9/22/11)	Cal. Super. Ct., Humboldt Cty., No. 110546	For Travelers Prop. Cas. Co. of Am.: Melissa A. Dubbs, <b>Carlson Calladine &amp; Peterson L.L.P.</b> /San Francisco, 415-391-3911; For Peter Connolly: Donald J. McMullen, <b>Duncan M. James, Law Offices of Ukiah</b> , Cal., 707-468-9271

Source: *Insurance Law & Litigation Week* research. (P) = plaintiff, (D) = defendant.

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