

The LITIGATOR

VOLUME V Official Publication of the Capitol City Trial Lawyers Association ISSUE 3

President's Message

BY: ERIC RATINOFF, PRESIDENT 2006

As you may have noticed, this publication has not come across your desk for quite some time. Some of you may have wondered “why?” In my personal experience as someone who has been a member of the Board, who has served in various officer positions, and who is now the President of this organization, the answer is simple – we have a very difficult time getting articles written and submitted for publication. I can tell you first hand that, as someone who has received *The Litigator* now for many years, I always enjoy receiving it and reading it. On the other hand, as someone who has sat on the Board of this organization for many years, actually getting this publication written, formatted, printed and sent out is often quite difficult.

You may or may not already know this, but it costs a lot of money to publish *The Litigator*. Each time *The Litigator* is published, it costs our organization \$2,600. That is a lot of money. Sure, the publication cost is offset partially by advertising dollars, but the dollars collected do not come anywhere close to the actual cost of producing and mailing *The Litigator*.

Is all of this effort and expenditure of our organization's limited resources truly worth it? It is my firm belief that if there was not an alternative to our organization's presence on each of our desks, our organization's regular communication of substantive issues and literature, and our organization's presence through some form of media, that regular publication of *The Litigator* would be an imperative. There was a time when, in fact, it was.

Currently, however, there is an alternative. Through several years of effort by certain members of our Board, particularly our President Elect, John Demas, and Kyle Tambornini, our organization has been developing an outstanding web-site that will be user-friendly, user-interactive, and will provide a daily presence for

our organization on the desks of each of our members. It is expected that the new web-site will be unveiled at the Annual Holiday Reception, and it is anticipated that the web-site will take great strides in serving the needs of our members. For example, we are currently working to establish as part of the web-site a deposition bank which will be usable by the membership according to established guidelines which will be announced. Additionally, as many of you know, we have a very active and well utilized list-serve that allows for regular communication among our membership. The list-serve is regularly used by members to exchange briefs, articles, ideas, stories, case information, appellate decisions, etc.

One of the functions that our new web-site will be able to serve is to have as part of it a permanent column which can serve to provide the substantive content that is otherwise provided in *The Litigator*. Publication of *The Litigator* in this fashion will come at a nominal cost, if any. An added benefit would be that all of the substantive literature will be electronically archived and permanently available. Any person who wishes to have a hard copy, can simply print it out on her office computer.

Certain members of our organization are concerned that the failure to publish a printed copy of *The Litigator* and mail it to the membership and judges is not feasible because not all of our membership uses the internet. There is further concern that our local judges, who also currently receive the printed publication, may not continue to read *The Litigator* unless it is provided to them in a printed format.

What do you think? Inside this issue of *The Litigator* you will find a form captioned “The Litigator Survey.” Now that you know the cost of production of *The Litigator*, the alternatives to our current form of producing it, and some of the pros and cons of continuing with it, we would like your feedback as to whether our organization

should continue to publish a printed version of *The Litigator*. Please fill out the form as it applies to you, regardless whether you are a member, a prospective member, a judge, or whomever. Your feedback is very important to us.

Make no mistake about it, regardless of whether the printed publication continues or not, *The Litigator* will continue. Really, the question to be determined is whether it makes sense for our organization to continue to publish, print, and mail *The Litigator*. It is your organization, and ultimately the decision will come down to what the membership wants.



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Check out our web page at:
<<http://www.cctla.com>>

Uninsured Motorist Primer

A FIVE PART SERIES

BY: ALLAN J. OWEN, CCTLA BOARD MEMBER

(This is the first portion of a five-part series in which subsequent parts will be published in future issues of The Litigator.)

INTRODUCTION

These materials are written solely for the use of a continuing education class. This is not intended as a substitute for careful research of the particular issue involved nor is this article meant to be complete in and of itself without reference to other and more complete discussions of the topic of uninsured and underinsured motorists. The reader is referred to Insurance Code §11580.2, Clifford, California Uninsured Motorist Law (6th Ed.), and CEB, California Uninsured Motorist Practice. Most importantly, the reader is advised to review the policy involved in the particular claim. Insurance Code §11580.2 provides the minimum requirements for uninsured motorist coverage in the State of California. Many carriers' policies (intentionally or unintentionally) contain provisions that are more generous than the uninsured motorist law requires. These more generous provisions will prevail over the narrower statutory provisions. Utah Property & Casualty Insurance Guaranty Association v. USAA, (1991) 230 Cal App 3d 1010. Many carriers' policies contain provisions which are void as they conflict with Insurance Code §11580.2. Prudential LMI Com. Ins. v. Superior Court, (1990) 51 Cal 3d 674.

WHAT IS AN UNINSURED MOTOR VEHICLE

Insurance Code §11580.2 contains the definition of an uninsured motor vehicle. Note that the policy refers to a motor vehicle, not a motorist. This is an important distinction. It is important to note that the definition requires only that either the ownership, maintenance or use of the vehicle falls within the statutory definitions. This position was consistently noted by the authors of hornbooks in the area and has gained support by the court's holding in United Pacific/Reliance Insurance Company v. Kelly, (1983) 140 Cal App 3d 72. No case has squarely resolved the issue as to whether an uninsured motorist claim arises when an injury is caused by a driver in a situation where only the driver or the owner is uninsured while the other has coverage.

If the owner has coverage, the permissive user portions of the owner's policy will normally also cover the operator. On the other hand, if the operator has insurance coverage, there is very little reason to determine whether or not the owner is insured since the owner's liability will be limited to \$15,000.00 pursuant to the Insurance/Vehicle Code sections regarding permissive use.

Disputes in this area normally arise where the owner of the vehicle has no insurance and the operator cannot be found. This can arise where there is a hit and run accident where the license plate number is obtained but the owner denies that he was operating the vehicle at the time of the accident. If the owner of the vehicle is uninsured, the claimant should not have the burden of proving that the operator was likewise uninsured since the statute requires only that either the owner or the operator have no insurance coverage.

Obviously, an accident arising out of a situation where neither the owner nor the operator carries a policy of insurance or a liability bond is an uninsured motorist situation. Pursuant to the Insurance Code, a situation where the carrier is or becomes bankrupt or insolvent within one year of

the accident also generates an uninsured motorist case. Note, however, that where the carrier is solvent at the time of the claim and only becomes insolvent later, some special statutes of limitations and procedural rules may apply and thus if you have one of these situations, review the Insurance Code sections covering this situation carefully. If the carrier becomes insolvent more than one year after the accident, this definition does not apply. State Farm v. Superior Court, (1994) 23 Cal App 4th 1297. A carrier need not be in bankruptcy or receivership to be insolvent; all that is necessary is that the carrier cannot pay a claim. Romano v. Mercury Insurance Company, (2005) 128 Cal App 4th 1333.

The Insurance Code also provides that where a carrier denies coverage or refuses to admit coverage without a condition or reservation, an uninsured motorist situation arises. In the situation where the carrier has accepted coverage only with a reservation of rights based upon an intentional act exclusion, an uninsured motorist situation probably has arisen (think road rage, as long as the uninsured motorist causes the injury by operating the vehicle). Since, at the uninsured motorist level, the intent of the uninsured motorist is irrelevant, it may be much more expedient to proceed in these situations in an uninsured motorist setting than to proceed through trial with walking the tightrope of negligent action equals lower damages equals insurance versus intentional action equals higher damages equals no insurance. The Insurance Code does not state whether or not a reservation of rights solely based upon the potential of punitive damages is a reservation of rights sufficient to trigger the uninsured motorist protection. The statutory language is certainly broad enough for this interpretation and the courts have consistently held that the statute should be interpreted as broadly as possible to provide coverage. Thus, it is entirely possible that such an innocuous reservation of rights may well give rise to uninsured motorist coverage for the insured. Note that punitive damages recoverable against the uninsured motorist are not recoverable under the uninsured motorist policy provisions. CSAA v. Carter, (1985) 64 Cal App 3d 257.

Many carriers, where there is a question as to whether or not the operator of the vehicle had permission to use the vehicle, also issue reservation of rights letters or accept coverage only conditionally (subject to a condition that it be found that the operator had permission to use the vehicle). In this situation, uninsured motorist coverage arises not only due to the rules under discussion but also because the Insurance Code specifically provides for uninsured motorist coverage in the situation where a vehicle is operated without the owner's permission so long as neither the owner nor the operator have insurance to cover this situation. The author knows of no routine automobile insurance policy which would cover these situations; however, there may very well be special policies such as garage policies or policies covering rental car agencies which might provide coverage for either the owner or the operator under these circumstances.

An underinsured motor vehicle (one whose liability limits are lower than the underinsured motorist limits of the policy in question) is now defined by the Insurance Code as an uninsured motor vehicle. This inclusion

Continued on page 3

Uninsured Motorist ...

Continued from page 2

makes it clear that the uninsured motorist provisions of the policy apply to an underinsured motorist situation.

A vehicle which carries a policy with liability limits less than those required by our insurance code (in other words, less than 15/30) is also an uninsured motor vehicle. This situation may arise where the tortfeasor is an out-of-state resident. Any policy issued in California or designed to cover a vehicle primarily garaged in California automatically has liability limits of at least 15/30. Where the tortfeasor's policy has been reduced so that there is not \$15,000.00 per person remaining (e.g., where prior settlements have been made leaving only \$7,000.00 in coverage for the remaining victim), an uninsured motorist does not arise. *Traveler's v. Bouzer*, (1974) 39 Cal App 3d 992. In fact, even underinsured motorist coverage does not apply in this situation unless the total limits before reduction were lower than the UM limits. *Schwieterman v. Mercury Casualty*, (1991) 229 Cal App 3d 1044; *State Farm v. Messenger*, (1991) 232 Cal App 3d 508. This circumstance arises often in multiple vehicle accidents and it is important to know when negotiating settlement of an interpleader action or mediation in one of these situations whether your client's or other injured victim's uninsured motorist carriers have exposure.

Finally, the Insurance Code provides that an uninsured motorist situation arises where the owner or the operator of the other vehicle is unknown - the so-called "hit and run" situation.

UNDERINSURED MOTORIST

Underinsured motorist are, by definition, uninsured motorists. The biggest issue involved is how to get to the underinsured motorist claim

Insurance Code §11580.2(p)(5) provides that the insurer is entitled to reimbursement or credit for the amount received by the insured from the underinsured motorist. The Insurance Code also states that no underinsured motorist claim arises until the policy limits of the underinsured motorist have been paid. Nonetheless, in *Hartford v. Macri*, 3 Cal App 4th 1207 (hearing granted - don't cite), the intermediate appellate court held that notwithstanding the above provisions of the Insurance code, the insured was required to obtain the consent of the carrier prior to settling with the underinsured motorist. Since the insurance carrier had never been requested to give its consent nor had it given its consent, the insured's settlement of the underlying claim precluded an underinsured motorist claim being made. This is because the uninsured motorist statute requires that the insured not settle or go to judgment against the uninsured motorist without first obtaining the consent of the insurance carrier.

The Supreme Court reversed in *Hartford Fire Insurance Company v. Macri*, (1992) 4 Cal 3d 318. The Court found that there is no duty on the part of an insured to obtain the consent of the underinsured motorist carrier prior to settling with the underlying tortfeasor and the tortfeasor's insurance carrier. The Supreme Court based its determination on the fact that there is no right to subrogation when an underinsured motorist carrier makes payment to its insured.

(Part two to be published in a future issue of *The Litigator*.)



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4th Annual Spring Reception and Silent Auction

The 4th annual CCTLA Spring Reception and Silent Auction was held April 18th at the beautiful home of CCTLA members Allan Owen and Linda Whitney. Over 65 attendees enjoyed

beverages and hors d'oeuvres while bidding on fabulous silent auction items. The event raised \$7,405.00 all of which was donated to the Sacramento Food Bank Services.





Continued on page 6



Finally, the delivery of funds was done on August 9, 2006 at Sacramento Food Bank Services. A donation amount of \$7,405 was presented. Thanks goes to all who donated. Left to right: Debbie Keller, Jill Telfer, Margaret Doyle, Dorothee Mull (SFBS), Eric Ratnoff and Blake Young, Executive Director of SFBS.



CCTLA Facts and Figures

The legislative advocates for the Consumer Attorneys of California are the last line of defense you and your clients have against multi-national corporations who want to close the doors to courthouses, and take away the right to hold people accountable for their actions through the civil justice system.

CAOC works tirelessly to ensure that everyone has access to the civil justice system.

Overview of the 2005-2006 Legislative Session:

- 3526 pieces of legislation have been introduced in the 2005-2006 Legislative Session. Each bill is reviewed and assessed by the CAOC Legislative Team.
- In 2005- 2006 the CAOC Legislative Team tracked and monitored **over 1,000** pieces of legislation.
- In 2005- 2006 the Legislative Team actively worked on **over 200** pieces of legislation.
- There were over a dozen attempts by the Senate and Assembly to undermine tort law through specific legislation. None of those bills made it out of committee.

For any questions on specific legislation, please visit the CAOC website, www.caoc.com, or call the State office at 916-442-6902. To get involved with legislative actions in Sacramento and in your district, please contact CAOC Grassroots Coordinator Megan Menth at Megan@caoc.org



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Attention Consumer Attorney Members

BY: FRANK M. PITRE, CAOC PRESIDENT;
RAYMOND P. BOUCHER, CAOC PRESIDENT-ELECT AND DON A. ERNST, LEGISLATIVE CHAIR

We want to alert you to three important bills that are pending on the Governors desk. Your help is urgently needed to get Gov. Arnold Schwarzenegger to sign these bills into law. We ask that you write, phone or email your support of these bills and urge his signature. The bills are: SB 1281 (Romero): Consumer Attorneys is the sponsor of this bill, which requires state contractors that employ 100 or more people to provide their employees with not less than five days of regular pay for jury service. This is a much-needed bill that will reduce the hardship that many jurors suffer. SB 1281 is based on a successful Los Angeles ordinance that has been in effect for three years.

SB 815 (Perata): SB 815 would restore some justice for victims of industrial injuries. It would double the amount of benefits over the next three years by doubling the number of weekly payments to permanently disabled workers. It recognizes the huge, unintended cuts in benefits and the severe hardships those cuts are causing, and helps rectify them.

SB 56 (Dunn): This bill would create 50 new judgeships for the fiscal year 2006-2007, which is critical to reduce court overcrowding and allow injured plaintiffs to have their cases heard promptly. It also contains important new requirements to require reporting on the ethnicity and gender of judicial applicants. It is requested that you contact the Governor and urge him to sign these bills.

Contact Information:
Hon. Arnold Schwarzenegger
Governor of California
State Capitol
Sacramento, CA 95814
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and their families
the happiest
of holidays
and a most
prosperous
2007!*



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2nd Annual Helmet Giveaway

CCTLA STEPS UP AGAIN TO HELP LOCAL KIDS

BY: JACK VETTER, CCTLA BOARD MEMBER

On August 15 twelve volunteers from CCTLA led by Community Service Officer Shannon Price corralled over 50 children into a Bicycle Helmet Rodeo at Sacramento City's Robertson Center on north Norwood Avenue. The children happily shared their rides and some simply enjoyed the course by running through the old fashioned way. The kids negotiated the curves, circles, and snakes of the course in new CPSC approved multi-sport helmets. The helmets, obtained from a nonprofit group at cost, were donated by CCTLA.

This community service gesture was just one part of an effort by trial lawyers to emphasize that we want people, and especially kids, to stay safe and unharmed. Only after the



injury occurs do we step in to level the playing field against the insurance companies and help our clients get fair compensation.

Officer Shannon Price spoke to the kids and helped with logistics. Margaret Doyle, Wendy York, our Executive Director Debbie Keller, David Lee, Dan Glass, Ray Ball, John Demas, Joe Marman, Jesse Valerio, Joe Barrera, Omar Gonzalez, and Jack Vetter fitted helmets and managed the melee. One hundred helmets were donated with the extra given to the Center to distribute to needy kids who were unable to attend. This is just one more way trial lawyers are making a positive

difference in our community.



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Members Enjoy Spring Fundraiser For Senator Joe Dunn

Craig Ashton, Joseph Babich, Robin Brewer, Robert Buccola, William Callaham, Steve Campora, Brooks Cutter, Roger Dreyer, Glen Ehlers, Hank Greenblatt, Robert Henk, John Jefferson, Larry Lockshin, Duane Miller, Christopher Prince, Craig Sheffer, Darrell Steinberg, Jill Telfer, Carol Wieckowski and Chris Wood collectively held a special spring fundraiser for Senator Joe Dunn – “The man who cracked Enron” – he led California’s

investigation into the energy crisis and uncovered the energy pirates of Enron. He has for many years been recognized as “one of the top 100 most powerful lawyers in California. The Senator is a candidate for California State Controller.

*(Editor’s note: This event was **NOT** a CCTLA sanctioned function)*



(left) CCTLA Vice President Jill Telfer and Senator Joe Dunn



(above) Senator Joe Dunn and Bob Buccola.



(above) Senator Joe Dunn with CCTLA Executive Director Debbie Keller.



(l-r) CCTLA members Dan Wilcoxon, Kevin Culhane, Mike Jones and Senator Dunn.

Capitol City Trial Lawyers Association

Post Office Box 541, Sacramento, CA 95812
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Web site: www.cctla.com

Annual Meeting/Holiday Reception & Installation of the 2007 CCTLA Officers and Board

**TO ALL MEMBERS OF THE
CAPITOL CITY TRIAL LAWYERS ASSOCIATION
& THOSE WHO MAKE OUR JOBS POSSIBLE**

You are cordially invited to the CCTLA Annual Meeting & Holiday Reception, to be held on:

Date: Thursday, December 14, 2006

Time: 5:30 p.m. to 7:30 p.m.

Place: SOFIA RESTAURANT, 815 11th Street, Sacto., CA

*This Annual Meeting & Holiday Reception is free to honored guests,
CCTLA members, and one guest per invitee.*

*Reservations must be made no later than Friday, December 8, 2006,
by contacting Debbie Keller at the CCTLA office at 916/451-2366.*

We hope to see you there!

ERIC RATINOFF, President, & the Officers and Board of CCTLA


*For the holiday season, CCTLA is asking its membership
to assist the Mustard Seed School.*

*A representative from Mustard Seed will be present
at this reception to accept donations from the CCTLA membership.
CCTLA will be contributing \$500 to Mustard Seed for the holidays.
CCTLA thanks you in advance for your donation.*

Taxation of Settlements

By: ALLAN OWEN, CCTLA BOARD MEMBER

Need information about the taxability of personal injury settlements? Publication 4345⁰⁰ provides both a helpful overview of the variety of settlements while explaining the appropriate tax treatments for each.

The taxability of a personal injury settlement usually depends on the basis and content of the settlement. Expanded definitions of the tax treatment of compensation for injuries or sickness can be found in Internal Revenue Code Section 104⁰ and accompanying Regulations. 

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Calendar of Events ... (Capitol City Trial Lawyers Association's Upcoming Activities)

TUESDAY, NOVEMBER 14, 2006

Q&A Luncheon • Time: 12 Noon • Location: Vallejo's (1900 4th Street)
CCTLA Members Only

FRIDAY, NOVEMBER 17, 2006

CCTLA Luncheon • Topic: TBA
Speaker: *Stephen Davids, Esq. & Jay-Allen Eisen, Esq.* • Time: 12 Noon
Location: Firehouse Restaurant • CCTLA Members Only – \$25

TUESDAY, DECEMBER 12, 2006

Q&A Luncheon • Time: 12 Noon • Location: Vallejo's (1900 4th Street)
CCTLA Members Only

THURSDAY, DECEMBER 14, 2006

CCTLA ANNUAL MEETING & HOLIDAY RECEPTION
Time: 5:30 - 7:00 p.m. - Location: Sofia Restaurant

WEDNESDAY, JANUARY 10, 2007

WHAT'S NEW IN TORT & TRIAL: 2006 IN REVIEW
Time: 6:00 to 9:30 p.m. • Location: Capitol Plaza, Holiday Inn

FRIDAY, JANUARY 26, 2007

CCTLA Luncheon • Topic: TBA • Speaker: TBA • Time: 12 Noon
Location: Firehouse Restaurant • CCTLA Members Only – \$25

Contact Debbie Keller at CCTLA at 916/451-2366 for
reservations or additional
information with regard to any of the above seminars.



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Stanford Smith, Attorney at Law

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Register to attend our CCTLA Members Only webinar Thursday, November 30th @ 11:00 am PCT by calling us at 801-722-7086 or register online at: <http://www.lucion.com/lucion-events.html>

 **LUCION**
TECHNOLOGIES

CCTLA Members Eric Ratinoff, John Demas, Allan Owen and David Lee Honor Senator Deborah Ortiz

A special reception honoring Senator Deborah Ortiz was held in early March at the beautiful home of Allan J. Owen and Linda Whitney. Several CCTLA members attended the fundraising event for the senator's campaign for Secretary of State.



Craig Sheffer and Senator Deborah Ortiz



Senator Ortiz and Kerrie Webb



Linda Whitney, Senator Ortiz and Allan Owen



David Smith, David Lee and Margaret Doyle

*2006 CCTLA
Officers & Board*

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Litigator Survey

- CCTLA should continue to print and mail *The Litigator*.
- CCTLA should NOT continue to print and mail *The Litigator* but should instead make *The Litigator* part of the CCTLA web site.

Date: _____

Name: _____

Please fax or mail this form to:
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