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## 2000 DEVELOPMENTS IN CALIFORNIA INSURANCE CASE LAW

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2000 DEVELOPMENTS IN  
CALIFORNIA INSURANCE CASE LAW

**Accident**

The term "accident" as used in a CGL policy includes unintentional harm resulting from intentional conduct. *Commercial Underwriters Ins. Co. v. Superior Court (Gulf Underwriters Ins. Co.)* (2000) 84 Cal.App.4th 181, *depublished and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

Giving bad professional advice is not an "accident." *Ray v. Valley Forge Insurance Company* (2000) 77 Cal.App.4th 1039.

**Additional Insureds**

An insurer has a duty to provide notice of policy cancellation to all named insureds, including "additional named insureds." *Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116.

An additional insured endorsement to a subcontractor's liability policy obligated the insurer to defend the general contractor for defective work completed before the policy inception because the policy failed to expressly limit covered "completed operations" as to time or specific project. *Pardee Construction Co. v. Insurance Company of the West* (2000) 77 Cal.App.4th 1340.

**Advertising Injury**

"Advertising" requires widespread promotional activities directed to the public at large and does not encompass personal solicitations. *Peerless Lighting Corporation v. American Motorists Ins. Co.* (2000) 82 Cal.App.4th 995.

First publication exclusion bars coverage for defamatory statements made prior to a policy's inception and for substantially similar defamatory statements republished thereafter. *Ringler Associates Inc. v. Maryland Cas. Co. et al.* (2000) 80 Cal.App.4th 1165.

Trademark exclusion applied to claims of trade dress infringement and unfair competition because such claims "arose out of" trademark infringement. *Aloha Pacific, Inc. v. California Insurance Guarantee Assoc.* (2000) 78 Cal.App.4th 740, *modified* 2000 Cal.App. LEXIS 227.

**Allocation**

Pro-rata allocation between primary insurers is proper where excess-only and pro-rata other insurance provisions conflict. *Pacific Indemnity Co. v. Bellefonte Ins. Co.* (2000) 80 Cal.App.4th 1226.

Insurer not entitled to contribution from other insurer which did not receive notice of a potential contribution obligation prior to resolution of the underlying action. *Truck Insurance Exchange v. Unigard Insurance Co.* (2000) 79 Cal.App.4th 966.

Pro rata “other insurance” clause requires that liability between primary insurers is apportioned severally. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

### **All Sums**

An appellate court opinion determining that the “all sums” provision obligates an insurer to indemnify an insured for all harm caused by an occurrence, including harm resulting after the policy period, was decertified. *Syntex Corporation v. Lowsley-Williams & Cos.* (2000) 994 P.2d 342, 00 C.D.O.S. 1238, *depublished and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

### **Appeals**

Appellate court must use “highly deferential” standard in ruling on trial court’s grant or denial of a new trial and can only reverse the trial court’s decision on a finding that there was “no substantial basis in the record.” *Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 1152A.

California Supreme Court decertified appellate court’s ruling that a summary adjudication order in favor of policyholder on duty to defend is not appealable as final order or as a writ of mandate. *St. Joe Minerals Corp. v. Zurich Ins. Co.*, *previously published at* (1999) 75 Cal.App.4th 261, *not published and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

### **Arbitration**

Where a non-party to an insurance policy seeks and receives benefits under the policy, the non-party is bound by the policy's arbitration clause. *Norcal Mut. Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64.

### **Arising Out Of**

Subcontractor must indemnify general contractor where claim is related to subcontractor’s work and did not arise solely from the general contractor’s negligence and where agreement between them provided for indemnification “with respect to all work” by the subcontractor and provided that the “indemnitor’s fault is of no consequence.” *Centex Golden Construction Co. v. Dale Tile Co.* (2000) 78 Cal.App.4th 992.

Exclusion for loss arising out of the use or entrustment of an automobile precludes coverage for a premises liability claim based on negligently providing a third party with access to vehicle’s keys because the premises liability claim cannot be disassociated from the use of the automobile. *Belmonte v. Employers Ins. Co.* (2000) 83 Cal.App.4th 430.

### **Attorneys' Fees**

In an action to recover deductible from an insured, insurer may recover reasonable value of legal services of in-house counsel as attorneys' fees under Civil Code Section 1717. *PLMC Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084.

### **Automobile Insurance**

Exclusion for loss arising out of the use or entrustment of an automobile precludes coverage for a premises liability claim based on negligently providing a third party with access to vehicle's keys because the premises liability claim cannot be disassociated from the use of the automobile. *Belmonte v. Employers Ins. Co.* (2000) 83 Cal.App.4th 430.

Permissive use endorsement obligates an insurer to indemnify a permissive user of a non-covered auto that causes injuries to the public. *John Deere Ins. Co. v. Nueva* (9th Cir. 2000) 229 F.3d 853.

### **Bad Faith**

Comparative bad faith of an insured is not an affirmative defense to a bad faith claim against the insurer. *Kransco International Ins. Co. et al. v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, *modified* 2000 DAR 8267.

California Supreme Court grants review of decision that a trial court may consider mediator's report in assessing sanctions for party's bad faith conduct in mediation. *Foxgate Homeowners' Association v. Bramalea California, Inc.* (2000) 78 Cal.App.4th 653, *review granted and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

Reserving right of reimbursement does not give rise to a bad faith claim. *Prichard v. Liberty Mutual Ins. Co.* (2000) 84 Cal.App.4th 890, *modified* 2000 Cal.App. LEXIS 925.

An insurer's liability for a contractor's work the insurer contractually "guaranteed" and "warranted" does not expose the insurer to tort damages. *Rattan v. United Services Automobile Assoc.* (2000) 84 Cal.App.4th 715.

No bad faith where insurer promptly pays or reasonably questions chiropractic bills under medical payments coverage and remaining lien is satisfied by settlement. *Nager v. Allstate Ins. Co.* (2000) 83 Cal.App.4th 284.

No bad faith liability where insured was fully covered by other insurance because insured had no damages. *Ringler Associates, Inc. v. Maryland Cas. Co., et al.* (2000) 80 Cal.App.4th 1165.

Insured may not base a bad faith claim on an insurer's suit against insured without allegations of the insurer's unreasonable investigation or payment. *Old Republic Ins. Co. v. FSR Brokerage, Inc.* (2000) 80 Cal.App.4th 666.

Insurer's refusal to inform insured of a request by third party claimant for information on policy limits supports a claim for bad faith under theory that the insurer breached its duty to participate in settlement negotiations. *Boicourt v. Amex Assurance Co.* (2000) 78 Cal.App.4th 1390.

Insurer's early closure of investigation and unwillingness to reconsider denial of tender when presented with evidence of factual errors supports finding of bad faith. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

Insurer's conditioning settlement on insured's waiver of right to reimbursement as a third party beneficiary is unreasonable and may support a finding of bad faith. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

An appellate court decision holding that an insurer's voluntary defense of an insured for an accident occurring after the policy expired precluded any bad faith by the insurer regardless of the quality of that defense, was decertified, precluding it from being cited as authority in other cases. *Farmers Insurance Exchange v. Jacobs* (1999) 75 Cal.App.4th 373, *depublished and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

An insurer owes no duty of good faith to a non-party to the insurance contract. *Pershing Park Villas v. United Pacific Insurance Company* (9th Cir. 2000) 219 F.3d 895.

### **Bodily Injury**

Allegations of physical symptoms caused by emotional distress constitute "bodily injury." *Commercial Underwriters Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 181, *depublished and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

### **California Insurance Guarantee Association**

CIGA is not required to indemnify a successor company for claims which would have otherwise been covered by policies issued to the predecessor companies where the issuing insurers had become insolvent. *Baxter Healthcare Corp. v. California Insurance Guarantee Assn.* (2000) 85 Cal.App.4th 306.

Payments made by solvent insurers cannot be used as an offset to a CIGA obligation. *CD Investment Co. v. CIGA* (2000) 84 Cal.App.4th 1410, *modified* 2000 Cal.App. LEXIS 988.

Claims of an insurance company as a policyholder are covered claims for purposes of determining priority obligations owed by an insolvent insurer. *American National Ins. Co. v. Low* (2000) 84 Cal.App.4th 914.

CIGA entitled to litigate existence of coverage, even though a judgment had already been entered against insolvent insurer, where judgment based on insolvent insurer's failure to reserve

rights. *Aloha Pacific, Inc. v. California Insurance Guarantee Assoc.* (2000) 78 Cal.App.4th 740, modified 2000 Cal.App. LEXIS 227.

### **Civil Procedure**

After a judgment was entered against its insured, insurer, who had failed to defend the action, was not permitted to set aside the judgment under CCP § 663 on grounds of collusion because the insurer was not an “aggrieved party” for purposes of section 663, and therefore lacked standing to vacate the judgment *Tomassi v. Scarff* (2001) 01 C.D.O.S. 30, 2000 Cal. LEXIS 993.

Minimum contacts were not established through correspondence from insurer to policyholder, nor from the insurer’s making and denying payments under the policy so as to afford personal jurisdiction in the forum state. *Malone v. Equitas Reinsurance Ltd.* (2000) 84 Cal.App.4th 1430.

An insurer may intervene in an action against its insured where the insurer may be liable for a default judgment against the insured and it has no other means to litigate liability or damage issues. *Reliance Ins. Co. v. Superior Court (Wells)* (2000) 84 Cal.App.4th 383.

Class action lawsuit alleging violations of Business & Professions Code section 17200 claims survived demurrer where “class” was all California residents who purchased insurer’s life insurance policies due to alleged fraudulent sales practices of insurer. *Wilner v. Sunset Life Insurance Company* (2000) 78 Cal.App.4th 952, not published and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.

Life insurer acts as an ERISA plan fiduciary and therefore has standing to file a federal interpleader action. *Aetna Life Insurance Co. v. Bayona* (9th Cir. 2000) 223 F.3d 1030, modified 2000 Cal.App. LEXIS 27445.

### **Continuing Representation by Counsel in Light of Corporate Suspension**

Like suspension for nonpayment of taxes, a suspension under Corporations Code § 2205 disables a corporation and bars its participation in litigation. Law firm in bad faith and subject to sanctions for continued participation in litigation after learning of suspension. *Palm Valley Homeowners Association, Inc. v. Design MTC* (2000) 00 C.D.O.S. 10006, 2000 Cal.App. LEXIS 948.

### **Cumis**

The rate to be paid by a group of defending insurers to independent counsel is the amount actually paid by any of the insurers in the defense of similar actions in the community. *San Gabriel Valley Water Co. v. Hartford Accident & Indemnity Co.* (2000) 82 Cal.App.4th 1230, not published and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.

A general reservation of rights letter which does not seek reimbursement of defense costs of uncovered claims does not create a conflict of interest which requires appointment of *Cumis* counsel. *Gulf Ins. Co. v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone* (2000) 79 Cal.App.4th 114, *modified* 2000 DAR 2921.

Insurer has standing to bring legal malpractice action against defense counsel retained by insurer to defend insured where insurer's reservation of rights was general and did not create a conflict of interest between insured and insurer. *Gulf Ins. Co. v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone* (2000) 79 Cal.App.4th 114, *modified* 2000 DAR 2921.

### **Damages**

Unlawfully withheld wages may be recovered as restitution under California Business & Professions Code section 17200, *et seq.* and the defendant may raise equitable defenses to any remedy fashioned. *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163.

### **Duty to Defend**

The obligation to pay costs taxed against the insured in a suit requires that insurer pay attorneys' fees awarded as "costs" in a "mixed," i.e., covered and uncovered claim, action. *Prichard v. Liberty Mutual Ins. Co.* (2000) 84 Cal.App.4th 890, *modified* 2000 Cal.App. LEXIS 925.

Insurers of general contractor had a duty to defend despite subcontractors' policies naming the general contractor as an additional insured. *Maryland Cas. Co. v. Nationwide Mutual Ins. Co.* (2000) 81 Cal.App.4th 1082.

No duty to defend against claims for sexual abuse of a minor under a CGL policy. *Northland Ins. Co. v. Briones* (2000) 81 Cal.App.4th 796, *modified* 2000 DAR 7668.

An insured may not create a duty to defend by guessing at hypothetical, unpled third-party claims; this is especially true if insured has made it harder for insurer to investigate the claim. *Ringler Associates, Inc. v. Maryland Cas. Co., et al.* (2000) 80 Cal.App.4th 1165.

Duty to defend defamation claim is determined by reference to substantive law of defamation. *Ringler Associates, Inc. v. Maryland Cas. Co., et al.* (2000) 80 Cal.App.4th 1165.

Insurer's belated offer to pay cost of defense will not cure initial breach of duty to defend. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

When a third-party claim exposes insured to liability in excess of policy limits, insurer must notify insured of the offer to settle the claim within the policy limits even before the claimant sues the insured. *Anguiano v. Allstate Ins. Co.* (9th Cir. 2000) 209 F.3d 1167.

### **Duty to Indemnify**

California Supreme Court reviews issue of whether insurers have a duty to indemnify an insured in a government action absent a “suit.” *Certain Underwriters at Lloyds v. Superior Court (Powerine)* (1999) 75 Cal.App.4th 1038, *rehearing granted and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

No duty to indemnify liability for sexual abuse of a minor under a CGL policy. *Northland Ins. Co. v. Briones* (2000) 81 Cal.App.4th 796, *modified* 2000 DAR 7668.

Multiple liability insurers covering the same risk are each independently obliged to indemnify the insured for the entire amount of the loss. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

### **Exclusions**

Coverage limitations must be prominently placed in the policy in order to be enforceable. *Thompson v. Mercury Casualty Co.* (2000) 84 Cal.App.4th 90.

#### **Exclusion: Automobiles**

Exclusion for loss arising out of the use or entrustment of an automobile precludes coverage for a premises liability claim based on negligently providing a third party with access to vehicle’s keys because the premises liability claim cannot be disassociated from the use of the automobile. *Belmonte v. Employers Ins. Co.* (2000) 83 Cal.App.4th 430.

#### **Exclusion: First Publication**

First publication exclusion bars coverage for defamatory statements made prior to a policy’s inception and for substantially similar defamatory statements republished thereafter. *Ringler Associates Inc. v. Maryland Cas. Co.* (2000) 80 Cal.App.4th 1165.

#### **Exclusion: Impaired Property**

Impaired property exclusion did not apply to cereal contaminated with wood splinters where the product could not be restored to use. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

#### **Exclusion: Owned Property**

Owned property exclusion in real estate agent’s professional liability policy barred coverage for the agent’s acts and omissions only in connection with (1) property the agent or an immediate family member owns; (2) property the agent controls; or (3) property in which the agent has an existing financial interest. *Morris v. Employers Reinsurance Corp.* (2000) 84 Cal.App.4th 1026.

Owned property exclusion does not preclude coverage for groundwater contamination caused by the State of California because the State does not own the groundwater. *State of California v. Superior Court (Underwriters at Lloyd's of London)* (2000) 78 Cal.App.4th 1019.

**Exclusion: Pollution**

Appellate court decision holding that the “sudden and accidental” and “sudden, unintended and unexpected” pollution exclusions do not depend on an insured’s perspective was decertified, precluding it from being cited as authority. *Syntex Corporation v. Lowsley-Williams & Cos.* (2000) 994 P.2d 342, 00 C.D.O.S. 1238, *depublished and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

**Exclusion: Professional Services**

Professional services exclusion precludes coverage where all underlying allegations occurred with the scope of a business relationship. *Commercial Underwriters Ins. Co. v. Superior Court (Gulf Underwriters Ins. Co.)* (2000) 84 Cal.App.4th 181, *depublished and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

**Exclusion: Trademark Infringement**

Appellate court decision applying exclusion for trademark infringement was decertified, precluding it from being used as authority in other cases. *Industrial Indemnity Co. v. Apple Computer, Inc.* (2000) 994 P.2d 343, 00 C.D.O.S. 1237.

Trademark exclusion applied to claims of trade dress infringement and unfair competition because such claims “arose out of” trademark infringement. *Aloha Pacific, Inc. v. California Insurance Guarantee Assoc.* (2000) 78 Cal.App.4th 740, *modified* 2000 Cal.App. LEXIS 227.

**Exclusion: Vendor Endorsement**

Exclusion in vendor endorsement only applied where there is a causal connection between the vendor’s acts and the claimant’s injuries. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

**Expected or Intended**

An opinion determining that the “expected or intended” defense was based on the collective knowledge of corporate employees, derived from the scope of their authority, was decertified, precluding it from being used as authority. *Syntex Corporation v. Lowsley-Williams & Cos.* (2000) 994 P.2d 342, 00 C.D.O.S. 1238, *depublished and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

### **First Party Insurance**

An insurer is not required to pay costs of replacement where replacement of house concluded within 180 days, the limitation for replacement of property in the policy. *Fraley v. Allstate Ins. Co.* (2000) 81 Cal.App.4th 1282.

Contamination of almonds with wood splinters constituted physical loss. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

Contractor's failure to cover opening in roof is "efficient proximate cause" of damage, and not rain which caused water damage to property inside building, thereby affording coverage. *Tento International, Inc. v. State Farm Fire & Cas. Co.* (9th Cir. 2000) 222 F.3d 660.

### **Homeowners Insurance**

Homeowners entitled to recover for extensive cracks in house caused by defective construction of the foundation, and such recovery was not barred by the "economic loss rule." *Stearman v. Centex Homes* (2000) 78 Cal.App.4th 611.

### **Insolvent Insurer**

Claims of an insurance company as a policyholder fall within the category of a covered claim for purposes of determining the priority of obligations owed by an insolvent insurer. *American National Ins. Co. v. Low* (2000) 84 Cal.App.4th 914.

### **Insurance Code Section 11580**

A third party must establish a judgment is covered before Insurance Code section 11580 recovery is permitted. *Pershing Park Villas v. United Pacific Insurance Company* (9th Cir. 2000) 219 F.3d 895.

### **Legal Malpractice**

An attorney, having defended an insured, may not seek indemnity from the insurer's "monitoring counsel" by way of a cross-complaint in the insurer's malpractice suit alleging defense counsel negligently contributed to the insured's loss in an underlying sexual harassment suit. *Shaffery v. Wilson, Elser, Moskowitz, Edelman & Dicker, LLP* (2000) 82 Cal.App.4th 768.

### **Legislative Subpoenas**

City subpoenas seeking information from insurers regarding potentially responsible parties for groundwater pollution is valid so long as there is: (1) authority by ordinance or similar enactment; (2) a valid legislative purpose; and (3) pertinence of the information sought to the legislative investigation. *Connecticut Indemnity Co. v. City of Lodi* (2000) 23 Cal.4th 807.

### **Life Insurance**

Life insurer who charged insured with muscular dystrophy twice the standard life insurance rate even though the disease has minimal effect on mortality commits an unlawful business practice in violation of California Business and Professions Code section 17200. *Chabner v. United of Omaha* (9th Cir. 2000) 225 F.3d 1042.

Life insurer acts as an ERISA plan fiduciary and therefore has standing to file a federal interpleader action. *Aetna Life Insurance Co. v. Bayona* (9th Cir. 2000) 223 F.3d 1030, *modified* 2000 Cal.App. LEXIS 27445.

### **Missing/Lost Policies**

California Supreme Court grants review of appellate ruling that the insured failed to prove the material terms of a missing policy, and thus insurer had no duty to defend or indemnify insured against bodily injury claims. *Dart Industries, Inc. v. Commercial Union Ins. Co.* (2000) 77 Cal.App.4th 916, *review granted and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

### **Notice**

An insurer can be estopped from raising a policy's statute of limitations defense for failing to comply with regulations requiring disclosure of time limits to the insured. *Neufeld v. Balboa Ins. Co.* (2000) 84 Cal.App.4th 759.

Insurer not entitled to contribution from other insurer which did not receive notice of a potential contribution obligation prior to resolution of the underlying action. *Truck Insurance Exchange v. Unigard Insurance Co.* (2000) 79 Cal.App.4th 966.

### **Occurrence**

A fraud scheme that took place over a three year span entitled the insured to separate coverage under each policy period, rather than just the last, because the definition of "occurrence" was ambiguous and the insurer could not show that one continuous contract existed. *Karen Kane, Inc. v. Reliance Insurance Co.* (9th Cir. 2000) 202 F.3d 1180.

### **Other Insurance**

Insurers of general contractor had a duty to defend despite subcontractors' policies naming the general contractor as an additional insured. *Maryland Cas. Co. v. Nationwide Mutual Ins. Co.* (2000) 81 Cal.App.4th 1082.

Pro-rata allocation between primary insurers is proper where excess-only and pro-rata other insurance provisions conflict. *Pacific Indemnity Co. v. Bellefonte Ins. Co.* (2000) 80 Cal.App.4th 1226.

Pro rata “other insurance” clause requires that liability between primary insurers is apportioned severally. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

Payment by third parties’ insurer toward settlement of underlying personal injury action satisfied the insured’s self-insured retention, despite “other insurance” provision in the policy. *Vons Companies, Inc. v. United States Fire Insurance Co.* (2000) 78 Cal.App.4th 52.

### **Personal Injury**

Claim for fraudulently obtaining an easement does not constitute a wrongful invasion of the right of private occupancy. *Sterling Builders, Inc. v. United National Ins. Co.* (2000) 79 Cal.App.4th 105.

### **Property Damage**

Evidence of construction defects that had not yet caused property damage were properly excluded from evidence in plaintiffs’ negligence case because such defects fell within the “economic loss rule”. *Aas v. Superior Court* (2000) 24 Cal.4th 627.

Wood splinters found in cereal nut clusters constitute property damage where incorporation of potentially injurious material into a product results in loss to other products. *Shade Foods, Inc. v. Innovative Product Sales & Marketing* (2000) 78 Cal.App.4th 847, *modified* 2000 DAR 3351.

Following *A.C. Label* and rejecting the Ninth Circuit’s approach in *K.F. Dairies*, a California Court of Appeal denied coverage under a CGL policy for property damage that occurs during the policy period when the insured has no connection to the property until after policy expires. *Tosco Corporation v. General Insurance Company of America* (2000) 00 C.D.O.S. 10230, 2000 Cal.App. LEXIS 990.

Damage occurring within the policy period, but before the insured purchased the property, is potentially covered under a CGL policy. *K.F. Dairies, Inc. v. Fireman’s Fund Ins. Co.* (9th Cir. 2000) 224 F.3d 922.

### **Reservation of Rights**

Agreement-in-fact test is improper for evaluating whether an insurer properly reserved rights. *Old Republic Ins. Co. v. FSR Brokerage, Inc.* (2000) 80 Cal.App.4th 666.

Where insured had been released from liability, insurer’s failure to reserve its rights under the policy did not waive its right to deny coverage or estop it from denying coverage where the third party claimant had not detrimentally relied on the insurer’s failure to reserve its rights. *Aloha Pacific, Inc. v. California Insurance Guarantee Ass’n.* (2000) 78 Cal.App.4th 740, *modified* 2000 Cal.App. LEXIS 227.

### **Self-Insured Retentions**

Self-insured retentions are not primary insurance. *Montgomery Ward & Co. v. Imperial Cas. & Indemn. Co.* (2000) 81 Cal.App.4th 356.

Payment by third parties' insurer toward settlement of underlying personal injury action satisfied the insured's self-insured retention, despite "other insurance" provision in the policy. *Vons Companies, Inc. v. United States Fire Insurance Co.* (2000) 78 Cal.App.4th 52.

### **Settlements**

California Supreme Court certifies for determination the Ninth Circuit's question of whether an insurer may recover settlement payments from an insured who did not agree to a reasonable settlement offer under a reservation of rights and was given the opportunity to assume its own defense. *Blue Ridge Insurance Co. v. Jacobsen* (2000) 00 C.D.O.S. 497, 2000 Cal.App. LEXIS 234.

California Supreme Court grants review of case holding that an insurer is not bound by settlement agreement between insured and claimants where the insurer does not participate in negotiations and defends the insured. *Hamilton v. Maryland Cas. Co.* (2000) 78 Cal.App.4th 640, *rev. granted and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

Insurer obligated to notify insured of an offer to settle a third party claim within policy limits before the claimant sued the insured where the third party claim could expose the insured to liability in excess of policy limits. *Anguiano v. Allstate Ins. Co.* (9th Cir. 2000) 209 F.3d 1167.

### **Subrogation**

An insurer's subrogation action against a tenant is allowed where the rental agreement does not demonstrate an intent to insure the tenant under the landlord's fire insurance policy. *Fire Insurance Exchange v. Hammond* (2000) 83 Cal.App.4th 313.

### **Suit**

California Supreme Court reviews issue of whether insurers have a duty to indemnify an insured in a government action absent a "suit." *Certain Underwriters at Lloyds v. Superior Court (Powerine)* (1999) 75 Cal.App.4th 1038, *rehearing granted and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

Mediation program under Insurance Code section 10089.70 (addressing claiming arising out of the Northridge earthquake) tolls the one-year statute of limitations from date of election to completion of the program. *Michelson v. Mid-Century Ins. Co.* (2000) 83 Cal.App.4th 450.

### **Suit Limitation Provision**

An insurer can be estopped from raising a policy's statute of limitations defense for failing to comply with regulations requiring disclosure of time limits to the insured. *Neufeld v. Balboa Ins. Co.* (2000) 84 Cal.App.4th 759.

Mediation program under Insurance Code section 10089.70 (addressing claiming arising out of the Northridge earthquake) tolls the one-year statute of limitations from date of election to completion of the program. *Michelson v. Mid-Century Ins. Co.* (2000) 83 Cal.App.4th 450.

A loss payee's tort action to recover policy benefits is an action "on the policy" subject to the policy's one-year suit limitations provision. *Jang v. State Farm Fire and Cas. Co.* (2000) 80 Cal.App.4th 1291, *modified* 2000 DAR 6098.

### **Trigger of Coverage**

Appellate court decision holding that an insured has the burden of establishing the timing of property damage in order to trigger coverage was decertified, precluding it from being cited as authority. *Syntex Corporation v. Lowsley-Williams & Cos.* (2000) 994 P.2d 342, 00 C.D.O.S. 1238, *depublished and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

Damage occurring within the policy period, but before the insured purchased the property, is potentially covered under a CGL policy. *K.F. Dairies, Inc. v. Fireman's Fund Ins. Co.* (9th Cir. 2000) 224 F.3d 922.

### **Unfair Business Practices**

Courts cannot prohibit disgorged profits pursuant to action based on Business & Professions Code § 17200 from being placed in a fluid recovery fund. *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116.

Unlawfully withheld wages may be recovered as restitution under Business & Professions Code section 17200, *et seq.* and the defendant may raise equitable defenses to any remedy fashioned. *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163.

Class action lawsuit alleging violations of Business & Professions Code section 17200 survived demurrer where "class" was all California residents who purchased insurer's life insurance policies due to alleged fraudulent sales practices of insurer. *Wilner v. Sunset Life Insurance Company* (2000) 78 Cal.App.4th 952, *not published and case cannot be cited in any other proceeding pursuant to California Rules of Court, Rule 977.*

Life insurer who charged insured with muscular dystrophy twice the standard life insurance rate even though the disease has minimal effect on mortality commits an unlawful business practice in violation of Business and Professions Code section 17200. *Chabner v. United of Omaha* (9th Cir. 2000) 225 F.3d 1042.

**Waiver/Estoppel**

An insurer can be estopped from raising a policy's statute of limitations defense for failing to comply with regulations requiring disclosure of time limits to the insured. *Neufeld v. Balboa Ins. Co.* (2000) 84 Cal.App.4th 759.

Insurer's failure to reserve its rights under the policy did not waive its right to deny coverage or estop it from denying coverage where the third party claimant did not detrimentally rely on the insurer's failure to reserve its rights. *Aloha Pacific, Inc. v. California Insurance Guarantee Ass'n.* (2000) 78 Cal.App.4th 740, *modified* 2000 Cal.App. LEXIS 227.

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