

**Board of Governors**

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## **Self-Employed Contractor Cannot Hold Hirer Vicariously Liable for Job Injuries**

Insurancejournal.com – July 12, 2010

Property owners who hire independent contractors are not vicariously liable for on-the-job injuries to the contractor's employees, the California Supreme Court has ruled. The state high court extended the decision in *Privette v. Superior Court (Privette doctrine)* and said those injuries "are covered by workers' compensation insurance, the cost of which is generally included in the contract price for the project."

According to court documents in *Jeffrey Tverberg et al., v. Fillner Construction Inc.*, Fillner Construction Co. was the general contractor (GC) for the expansion of a commercial fuel facility operated by Ramos Oil Co. in Dixon, Solano County, Calif. To do its work, Fillner hired subcontractor Lane Supply, which delegated the work to Perry Construction Co., which then hired Jeffrey Tverberg.

Tverberg was paid hourly, but was an independent contractor, not a Perry employee. While on the job, Tverberg fell into a hole dug by another subcontractor and was injured. Tverberg subsequently sued the GC Fillner and the subcontractor Perry seeking damages for physical and mental injuries, and lost income under theories of negligence and premises liability, because he had repeatedly asked the holes to be covered.

Fillner argued it could not be held vicariously or directly liable for failing to provide a safe workplace.

But Tverberg said Fillner had retained control over safety conditions at the jobsite, and thus could be directly liable for its failure to eradicate a known danger.

The trial court ruled the independent contractor could not hold the GC vicariously liable on a theory of peculiar risk, and also rejected the argument at the GC was directly liable for failing to cover the holes because Tverberg was aware of the holes and Fillner had never promised to cover them.

Contractor – continued page 4...



## Note from the President

Now that elections are over, I want to extend a huge Thank You to my current board. This current board worked so hard to plan and execute, entertaining and worthwhile events for the association.

Chris Terrance, Vice President, thank you for being my backbone. Without your contribution, our association would not be where we are today. The golf tournament was a huge success! We've never oversold on a tournament! Everyone was able to play and had a great time.

Amy Gillen-Garcia, Secretary, thank you for taking the minutes and being the voice of reason. I enjoyed the property seminar and the t-shirts you made. I look forward to working with you as my Vice President.

Treasurer, David Creedon, thank you for taking the time and effort to manage the association accounts. I appreciate the advice you provided to the association as a long-standing board member. The association could not have survived without your contributions.

Membership, Bruce Rosenblatt, thank you for blasting our members with e-mails and maintaining our membership databases. Because of you, our members are aware of the association events and any announcements. I look forward to another year working with you.

Education, Pat Bobbs, thank you for the property and auto seminars. I know our members were able to re-certify and learn about the aspects of the industry. I look forward to working with you as my Treasurer.

Special Events, Traci Dorsey, thank you for your unrelentless efforts in planning entertaining events for the association. SDIAA Day At The Races, Holiday Party, and Vendors Night were tons of fun and we had a great turnout. Most especially memorable is Woodstock Themed Vendors Night. You will surely be missed.

Marketing, Karen Pretzel, thank you for maintaining the newsletter and helping out with both SDIAA and ERAC Golf Tournaments, Halloween Party, Election Night and all the community service-related projects. I look forward to another year working with you.

Legal/Legislative, Steve Meek, thank you for your contributions to the association.

Information Technology, Alan Kennedy, thank you for maintaining our website and for planning Adjusters Night. The association could not have survived without your contributions. Adjusters Night was so much fun. Adjusters who attended were able to enjoy the carnival-themed booths, enjoy the lively music and come away with great prizes.

Past President, Dune Pagaduan, thank you for being an advisor to me. You provided me guidance when I didn't know what direction to take and was very supportive of the decisions that were made.

With that being said....

Let me introduce to you, the newly elected board of directors for 2010-2011.

President:	Leah Miller
Vice President:	Amy Gillen-Garcia
Secretary:	Deanne Murphy
Treasurer:	Pat Bobbs
Education:	Alfred Dalton
Legal/Legislative:	Marvin Straus
Marketing:	Karen Pretzel
Membership:	Bruce Rosenblatt
Special Events:	Desiree Martini
Information Technology:	Jay Jackson

I am confident that the newly elected board will continue the accountability and integrity that is entrusted in us by our members. I appreciate any feedback or suggestions.

*Leah Miller*



## Del Mar Race Track

“Where the Turf Meets the Surf”

Join the SDIAA for our Annual

# Day at the Races

Friday, August 20, 2010

**\$45/person**

**\$400/group of 10**

*Ticket price Includes:*

*(1) ticket for the in-field area*

*\$10 in food vouchers*

*(1) raffle ticket*

1:30 - Gates open

3:30 - First Post

Prizes will be awarded after each race - winners will be chosen by raffle.

Followed by a free night of music by **OZOMATLI**

### *About Ozomatli*

*In their fourteen years together as a band, celebrated Los Angeles culture-mashers Ozomatli have gone from being hometown heroes to being named U.S. State Department Cultural Ambassadors. Ozomatli has always juggled two key identities. They are the voice of their city and they are citizens of the world. Their music— a notorious urban-Latino-and-beyond collision of hip hop and salsa, dancehall and cumbia, samba and funk, merengue and comparsa, East LA R&B and New Orleans second line, Jamaican ragga and Indian raga— has long followed a key mantra: it will take you around the world by taking you around L.A.*

## Insurers Report Rise in Questionable Claims Led By Hail, Auto Glass

Insurancejournal.com – August 2, 2010

Property/casualty insurance companies are reporting that the number of claims requiring more scrutiny than normal rose again in the first half of this year compared to 2009.

The National Insurance Crime Bureau's first half 2010 questionable claims (QC) [report](#) examines six referral reason categories of claims— property, casualty, commercial, workers' compensation, vehicle and miscellaneous.

Overall there was a 14 percent increase in QCs in four of the six categories in 2010 when compared to the first half of 2009. These are claims that NICB member insurance companies refer to NICB for closer review and investigation based on one or more indicators of possible fraud. A single claim may contain up to seven referral reasons.

Of note were the 107 percent increase in questionable hail damage claims and 527 percent increase in questionable auto glass claims so far this year when compared to the first half of 2009.

"Hail loss claims and QCs are generally concentrated in the central section of the U.S. However, seven of the top 10 states with the highest hail loss QC-to-claim ratio are not in the central section. This suggests that fraudulent hail losses can occur in any part of the country," the report notes.

"While there have been modest declines within a few categories of referrals, the 14 percent increase in the overall number of questionable claims for 2010 raises concerns," said Joe Wehrle, NICB's president and chief executive officer.

Wehrle said NICB, its member insurers and law enforcement have pursued suspected unscrupulous roofing companies that take advantage of storms to fake or deliberately cause damage to roofs in an effort to get insurers to pay for a replacement roof that wasn't damaged by a storm. They have also been putting pressure on staged accident rings in various regions including Tampa, where this has become a major problem.

"We're seeing concern from our members about criminal rings that are deliberately damaging vehicle windshields in order to file an insurance claim, and in some cases are not doing satisfactory repairs or replacements," Wehrle said.

NICB is supported by nearly 1,100 property and casualty insurance companies and self-insured organizations.

Source: National Insurance Crime Bureau

## Contractor continued...

On appeal, Tverberg argued that the *Privette* doctrine did not bar him from holding the GC vicariously liable on a theory of peculiar risk, and the Court of Appeal agreed, reversing the trial court's decision. "The *Privette's* rule of not imposing vicarious liability against a hiring party for jobsite injuries sustained by an employee of an independent contractor does not apply when the person injured is the independent contractor himself, because unlike the employee, the contractor is not subject to mandatory workers' compensation coverage," the court said. "... *Privette's* 'policies and rationale' would not permit an independent contractor to hold a hiring party vicariously liable for workplace injuries."

According to *Privette*, a peculiar risk is "neither a risk that is abnormal to the type of work done, nor a risk that is abnormally great." Rather, the courts rules that peculiar risk is a special or recognizable danger inherent in the work itself, and that arises "either from the nature or the location of the work and 'against which a reasonable person would recognize the necessity of taking special precautions.'"

When the Supreme Court decided to evaluate the case, it extended the *Privette* doctrine to self-employed contractors, saying a self-employed contractor "may not hold a hiring party vicariously liable for injuries resulting from the contractor's own failure to effectively guard against risks inherent in the contracted work," because in assuming the work, "unlike a mere employee, an independent contractor, by virtue of contract, has authority to determine the manner in which inherently dangerous construction work is to be performed, and thus assumes legal responsibility for carrying out the contracted work, including the taking of workplace safety precautions."

The availability of workers' compensation insurance to compensate for the injury "is not relevant to deciding whether a hirer should incur vicarious liability for workplace injury to an independent contractor who was hired by a subcontractor to do inherently dangerous work," the high court added.

The Supreme Court reversed the Court of Appeal decision, and remanded the case back to the Court of Appeal.

## The biggest loser, corporate edition

Comp Time

By Roberto Cenicerros

businessinsurance.com – July 24, 2010

The nation's growing obesity problem is also a growing obstacle for closing work comp and disability claims as well as adding to overall healthcare costs and lost employee productivity.

But now several of Minnesota's largest corporations are competing in a corporate version of "The Biggest Loser," according to a StarTribune.com story available [here](#).

Target, Cargill, Medtronic, UnitedHealth Group, General Mills, Blue Cross and Blue Shield of Minnesota, and UnitedHealth Group are vying to see which company can shed the most pounds as a percentage of total employee weight in a competition that began in May.

For those of you not familiar with "The Biggest Loser," it's an NBC Television show.

Minnesota's corporate competition will run through September according to the Alliance for a Healthier Minnesota, an employer group working to improve worker health.

An Alliance scoreboard shows Blue Cross is leading the pack. Its employees have shed 2,672 pounds or to 2.05% of total employee weight so far.

Comp Time applauds the competing employees and employers.

And speaking of weight management, the San Francisco-based Integrated Benefits Institute released an analysis last week based on the evaluation of "health and productivity management" practices at 450 U.S. companies.

IBI found employers are bolstering their HPM programs despite a lack of empirical outcomes data, which suggests workforce health is an increasingly prominent business strategy.

Weight management efforts are meeting a goal of reducing medical and pharmacy costs as well as reducing lost productivity, IBI said. That means adoption of weight management is a best practice for employers.

On the subject of best practices, the San Diego-based Disability Management Employer Coalition just released a white paper titled "Best Practices in Short-Term Disability Plan Design."

The white paper includes some large corporations sharing their practices that have helped them manage current STD challenges. The white paper is available [here](#).

# CLASSIFIED

**Are you or someone you know looking for a claims job? Or a recruiter trying to help someone find a job in the claims industry? Contact Karen Pretzel to run your information in our quarterly newsletter!**

## Job Seekers:

**Jennifer Field**

**858.248.0202**

[dolphinph@hotmail.com](mailto:dolphinph@hotmail.com)

*12 years of P&C insurance experience with last 6 years focused on serious injury claims, fatalities & litigation. Seeking work in serious injury claims or open to new positions within work comp, homeowners, commercial or general liability.*

## Recruiters:

**Cyndie Ursillo, HR/Recruiter**

**Dimont & Associates**

**1333 E. Madison Ave, Suite 200**

**El Cajon, CA 92021**

**619.768.4255**

[cursillo@bdimont.net](mailto:cursillo@bdimont.net)

*Hazard Insurance Claims on behalf of Loan Servicing industry handling homeowner claims. Seeking Claims Adjusters and Claims Managers.*

# 2010 Board of Directors



**Leah Miller, President**

Leah Miller is employed with Farmers Insurance as a Special Liability Claims Representative. She has worked at various positions from litigated bodily injury claims including management, for 21st Century Insurance and Wawanesa Insurance for almost ten years. She is married with 2 children. In her free time, she enjoys spending time with friends and family.



**Amy Gillen-Garcia, Vice President**

Amy is formerly a Claim Manager at Republic, Ward North America and American Claims Management. She has 31 years of claims experience (YIKES), and is currently the Regional Account Executive with Cunningham Lindsey. Amy holds a designation as a Chartered Property Casualty Underwriter (CPCU) and Associate in Claims (AIC).



**Deanne Murphy, Secretary**

Deanne Murphy is the SDIAA Board Secretary. Deanne grew up in San Diego. She is the Branch Owner of AmeriClaim and handles all lines of business. Deanne is also a Credentialed Mediator. She has been in the insurance industry for 27 years and has worked for ICW, Reliance Insurance, ACM, West Coast Casualty and Dimont & Associates. Deanne celebrates 21 years with Bill, has two children, Paige and Dylan, and a new grandson, David.



**Pat Bobbs, Treasurer**

Pat is an adjuster with Allstate Insurance Company working as a Field - Large Loss Fire Adjuster in Southern California. Pat presently works as a structure estimator and has been with Allstate for over 35 years. She has handled a variety of claims from Casualty, to Auto estimating in the field and Drive In claims offices, Subrogation, Personal Injury Protection and Property loss adjustments. Professional designations include: Law for the Claimsman, Associate in Claims and has secured the ICAR designation. She is happily married with one child who is a 2008 graduate of Sonoma State University.



**Alfred Dalton, Education**

Alfred Dalton is a supervisor at American Claims Management. Alfred's 20 year insurance history includes positions in underwriting, liability, bodily injury and litigation adjuster. Alfred is a graduate of Chapman University and is currently licensed in California and Arizona.



**Marvin Straus, Legal/Legislative**

Marvin J. Straus is a partner at *Parker Straus, LLP*. His areas of practice include Complex Fraud Litigation, Insurance Defense, Bad Faith Defense, Insurance Coverage, Qui Tam and Real Estate. Within his practice, he has been involved in all aspects of first and third party litigation. He is a frequent presenter to insurance companies and professional organizations on topics involving fraud, coverage, effective examinations under oath and bad faith issues



**Karen Pretzel, Marketing**

Karen Pretzel is the Account Executive for Apex Contracting & Restoration. She has been with the company since 2008 and loves it. Karen is originally from Minneapolis, MN and graduated from Drake University in Des Moines, IA. Though she still owns her condo in MN, she moved out to San Diego in 2007 and has no plans to ever leave. She is very involved and passionate in volunteering for several local non-profits. Her only child, Moxie, is a 13-pound Shih-Tzu/Bichon mix that she adores!



**Bruce Rosenblatt, Membership**

Bruce is a native San Diegan, attended Helix High and San Diego State University. With over 30 years experience in contents textile restoration he is a account manager for Restoration Management. Bruce is married with 3 children and loves to visit the South Pacific as often as possible, play golf and restore cars.



**Desiree Martini, Special Events**

Desiree is the Business Development Manager for Able Restoration. A mother of one handsome son. As a native San Diegan she feels that it is important to give back to the community and industry she works in. Desiree not only is involved with many organizations within our industry but also a fellow Rotarian. Desiree believes in being a good role model for her son and involves him in as many activities as she can.



**Jay Jackson, Information Technology**

Jay has been a First Responder and Sales and Marketing rep for CRDN of San Diego County since the wildfires of 2007. The former Marine and long time Temecula resident is just a semester shy of being a San Diego State University Alumni. Jay will be serving this term as the Information Technology position assisting with the website and all other communication for SDIAA.



## Get your name out to the SDIAA members *Advertise in the Newsletter*

### Facts about the SDIAA newsletter:

- Published quarterly 4 times a year
- Published electronically
- Distributed to all SDIAA members
- All newsletters are archived on the SDIAA website
- Circulation is approximately 400 and growing



### Why should you advertise in the SDIAA newsletter?

- Exposure & name recognition
- Gets your name out there to adjusters
- Newsletters with your info are archived on the website for anyone to see at anytime
- The SDIAA is growing – get in while the rates are low!

### Advertising Rates:

<u>Ad Size</u>	<u>Cost (per quarter)</u>
Small ad	\$36
Half Page	\$100
Full Page	\$150

### Publication Schedule

<u>Issue</u>	<u>Ad Deadline</u>
Winter (January)	December 15
Spring (March)	February 15
Summer (June)	May 15
Fall (October)	September 15

To see a copy of archived newsletters, go to [www.sdiasa.org](http://www.sdiasa.org).

Questions or want to advertise? Contact Karen Pretzel, Marketing Chair at [kpretzel@apex411.com](mailto:kpretzel@apex411.com) or call 619.255.3022.

**Know someone that would benefit from membership with the SDIAA?  
Questions? Contact [membership@sdiaa.org](mailto:membership@sdiaa.org) or [marketing@sdiaa.org](mailto:marketing@sdiaa.org).**



# San Diego Insurance Adjusters Association

P.O. Box 504480, San Diego, CA, 92150-4880

### MEMBERSHIP APPLICATION

I hereby apply for membership in the SDIAA as (please check one)

- New Membership       Renewal

Name \_\_\_\_\_

Home Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Home Phone \_\_\_\_\_

Employer \_\_\_\_\_

Position \_\_\_\_\_

Work Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Work Phone \_\_\_\_\_

**Email Address** \_\_\_\_\_

**Send Newsletter to (circle one):    Home    Work**

Check type of membership:

- Regular Members (claims personnel).....\$20  
I certify I am a claims adjuster, examiner, supervisor, manager of an insurance company or I am a CA Licensed Insurance Adjuster.
- Associate Members (non-claims personnel).....\$65  
I certify I am affiliated with or retained by the insurance claims industry.

If my application is accepted, I agree to abide by the constitution and by-laws of the San Diego Insurance Adjusters Association.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Pay online at [sdiaa.org](http://sdiaa.org) and send the application to SDIAA  
-OR-**

**RETURN APPLICATION ALONG WITH A CHECK PAYABLE TO SDIAA TO:  
SDIAA, P.O. Box 504480, San Diego, CA, 92150-4880**