

By J. Susan Graham

# The Sworn Examination under Oath in Insurance Investigations

**A recent statute places procedural limits on EUOs for the first time in nearly 100 years**

Recent legislation dramatically changed the landscape for attorneys practicing in the field of insurance law, particularly those who represent insurance company clients investigating a potentially fraudulent property insurance claim. When the California Legislature passed SB 658 in 2001, some observed that lawmakers were attempting to level the playing field by providing basic due process rights for policyholders who are subjected to a sworn examination under oath (EUO), while others deemed the new law to be a misguided attempt to fit the EUO into a deposition mold.

In seeking to protect insureds against abuse, the authors of SB 658 shone a particularly bright spotlight on the sworn examination under oath by creating a new statute, Insurance Code Section 2071.1, dedicated solely to that subject. The procedural requirements of the statute are, for the most part, limited to residential property insurance policies.<sup>1</sup> For the first time, an insured now has the right to assert at the EUO “any objection

that can be made in a deposition under state or federal law.” In addition, the statute limits the scope of the examination to securing information that is “relevant and reasonably necessary to process or investigate the claim.”

The EUO only may be taken upon “reasonable notice” and for a “reasonable length of time.” Among its other provisions, the statute expressly entitles insureds to be represented by counsel at the EUO; record the examination; receive, free of charge, a copy of the transcript from their insurance company within 10 days of requesting it; and make sworn corrections to the transcript.<sup>2</sup>

An insurer is equipped with a number of investigatory devices to assist it in promptly and fairly adjudicating insurance claims, with the EUO being one of the most important tools that it has at its disposal. More than 100 years ago, the U.S. Supreme Court articulated the purpose of the EUO: “To enable the [insurer] to

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possess itself of all knowledge, and all information as to other sources and means of knowledge, in regard to the facts, material to their rights, to enable them to decide upon their obligations, and to protect them against false claims.”<sup>3</sup>

Similarly, the California Supreme Court has acknowledged that the “facts with respect to the amount and circumstances of a loss are almost entirely within the sole knowledge of the

insured.” For that reason, an insurance company must “have some means of cross-examining, as it were, upon the written statement and proofs of the insured, for the purpose of getting at the exact facts before paying the sum claimed of it.”<sup>4</sup>

There is a presumption that the EUO is reasonable and that the insured must submit thereto:

There may be logic in [the] plaintiff’s argument that [the insurer] was not conducting the examination under oath in good faith, but the fact still remains that [it] was acting within the terms of an expressed stipulation found in the policy, which gave it the right to demand such an examination, and it is not for the insured to inquire into the motive actuating the company in exacting the examination, but on his part to comply therewith and to answer all material questions, notwithstanding he may believe that the principal object of the company is to find some loophole whereby it might evade payment of the policy.<sup>5</sup>

Further, the fact that an insurer may have undertaken other forms of investigation, such as obtaining preliminary interviews or written statements from the insured, does not necessarily preclude its right to conduct an EUO: “[Suggesting that] insurance companies are always required to pay claims at their face value on the basis of a preliminary interview” is “patently illogical.”<sup>6</sup>

Although some courts have

characterized the EUO as primarily focused on the investigation of suspicious claims, nothing in the governing statutes or the language found in the typical property insurance policy restricts it in this manner. Indeed, an examination of an insured may be useful in resolving issues that are entirely unrelated to fraud, such as the valuation of damaged or destroyed property or ascertainment of coverage under the policy.<sup>7</sup>

Nevertheless, the EUO most often is associated with the investigation of suspicious claims. Thus, the requirements imposed by Section 2071.1 will primarily affect attorneys who either 1) represent insureds with property insurance claims that are being investigated for potential fraud or 2) are retained by the insurance carriers to conduct EUOs and counsel the carriers concerning their rights and obligations regarding payment of the claims.

## Historical Perspective

For more than 100 years, both the U.S. and California Supreme Courts have recognized an insurance company’s right to take, and an insured’s obligation to submit to, a sworn examination under oath.<sup>8</sup> EUOs are most commonly utilized by insurers that provide property and automobile insurance coverage;<sup>9</sup> however, the state legislature has not mandated an insured’s submission to such an examination outside the context of a property insurance policy.<sup>10</sup>

In 1909, the California Legislature codified the procedure for examinations under oath as part

of the mandatory standard form fire insurance policy.<sup>11</sup> Violation of the statute was a misdemeanor. Although the 1909 statute underwent a number of significant changes, remarkably its provision governing EUOs remained virtually unchanged over the years.<sup>12</sup> The provision stated simply that the insured shall submit to an examination under oath, as often as reasonably required, by any person designated by the insurance company, and shall subscribe to the testimony given during the examination.

From 1909 until 2001, the legislature remained silent regarding the proper scope of the sworn examination under oath. However, the courts occasionally acknowledged an implicit requirement that the EUO be taken upon reasonable notice and for a reasonable length of time.<sup>13</sup>

Insurers long have been subject to prohibitions against unfair claims practices, which apply to all aspects of an insurer's investigation of claims. Insurance Code Section 790.03(h) enumerates 16 unfair claims practices, and there are numerous regulations promulgated by the California Department of Insurance addressing unfair claims settlement practices.<sup>14</sup> Among other requirements, an insurer must timely commence any investigation of a claim and provide the claimant with necessary forms, instructions, and reasonable assistance, including how to submit a proof of claim. However, these requirements do not provide any specific instruction or limitation on the scope of the EUO or the manner in which it is conducted.

With the passage of SB 658, specific statutory limitations finally have been placed upon the EUO procedure. The changes resulted from a concern that the lack of procedural protections effectively gave insurers carte blanche to abuse the process. Indeed, the legislative history for SB 658 reflects that the law was designed to provide the public with additional safeguards against unfair claim settlement practices because existing legal protections proved to be inadequate following the Northridge earthquake. Among the accusations leveled at insurance companies is that they exploited the EUO procedure with the intent to persuade insureds to forfeit their claims or accept a lower amount to resolve a claim.<sup>15</sup> This purportedly was accomplished by subjecting insureds to prolonged examinations on wide-ranging subjects and demanding that they produce voluminous amounts of documentation at their EUOs, including materials that implicate constitutionally protected privacy rights.

Soon after the introduction of SB 658, the insurance industry opposed several aspects of the bill as being unnecessary—"a solution in search of a problem."<sup>16</sup> These included the

safeguards regarding EUOs that were enacted as part of Insurance Code Section 2071.1. However, the majority of the new provisions serve a laudatory purpose. These include educating insureds, particularly those not represented by counsel, about what to expect at the EUO. They further delimit the scope of the EUO by imposing some guidelines; for example, the insurer may only conduct an examination in order to obtain "relevant" information that is "reasonably necessary to process or investigate the claim," and the examination can only last for a reasonable length of time. These requirements avoid what the California Supreme Court described, in a different context, as the insured being "unhappily surrounded by concentric circles of uncertainty."<sup>17</sup>

### Long-Held Practices

Installing these procedural parameters hopefully will curb the temptation of those insurers, however isolated in number they may be, to abuse the EUO mechanism and take advantage of the ignorance of insureds regarding their rights. Moreover, most of the recently enacted safeguards—including the limits on the scope of questions as well as the time frame of the examination—are hardly revolutionary concepts.

In truth, much of the statutory mandate merely adopts the long-held practices of many California insurers, who routinely 1) notify insureds of their right to have legal representation at the EUO,<sup>18</sup> 2) provide insureds with the opportunity to review and correct the

EUO transcript, and 3) accommodate insureds regarding the scheduling of the EUO. Moreover, certain courts recognize, at least implicitly, the right of insureds to protest the "reasonableness of the time, place, or mode of examination."<sup>19</sup>

In addition, there has always been a built-in incentive for insurance companies to limit the duration of EUOs to the reasonable length of time that is now mandated by statute, given the cost of not only retaining counsel to take the examination but also having the examination recorded and transcribed by a court reporter.

Naturally, the scope and duration of the examination will broaden in the face of a suspicious claim or a claim that provides specific challenges, such as one involving a large number of property items that are poorly documented. Indeed, if the circumstances surrounding the presentation of the insurance claim are "such as to indicate fraud... [the insurers are] entitled to conduct a searching examination."<sup>20</sup> However, a lengthy proceeding upon irrelevant topics is counterproductive to both insured and insurer alike. Indeed, the insurer runs the risk of having to defend against a bad faith lawsuit if it conducts an improper or biased investigation or misleads the insured in any way, including regarding the EUO process.<sup>21</sup>

The fact that insurers were in widespread voluntary compliance with many aspects of the statute prior to its enactment is not intended to suggest that Section 2071.1 is mere surplusage, nor does it obviate the

## Other Provisions of SB 658

In 2001 SB 658 revised Insurance Code Section 2071, which sets forth the standard form fire insurance policy mandated in California and contains a provision for an examination under oath (EUO).<sup>1</sup> Apart from the modifications to the EUO, SB 658 created new procedural protections for individuals faced with the investigation of their insurance claims. In a clever conceit, insurers must now educate their own insureds about practices on the part of insurers that are considered unfair and deceptive as a matter of law.<sup>2</sup> In this manner, the insured is placed in a better position to police the insurance company's compliance with applicable law.

Although prior versions of SB 658 flirted with the idea of making appraisal voluntary in nature or, alternatively, mandating appraisal only if requested by the insured, the bill as enacted retained the compulsory nature of appraisal when requested by either party, assuming the parties are unable to agree upon the amount of the loss. Insurance companies regularly invoke this statutory mandate to request a stay or dismissal of a "premature" lawsuit based on the insured's failure to first submit the claim to appraisal.<sup>3</sup>—**J.S.G.**

<sup>1</sup> INS. CODE §§2070, 2071. See also *Prudential LMI Commercial Ins. v. Superior Court*, 51 Cal. 3d 674, 682-83 (1990).

<sup>2</sup> INS. CODE §790.034. The education of the insured is accomplished by requiring the insurance company, upon being notified of a claim, to supply the insured with a free copy of the California Unfair Insurance Practices Act. INS. CODE §790.03.

<sup>3</sup> *Hamilton v. Liverpool, London & Globe Ins. Co.*, 136 U.S. 242 (1890) (predating statute but enforcing appraisal provision in insurance policy); *Northern Ins. Co. v. National Union Fire Ins. Co.*, 35 Cal. App. 481 (1917); *Appalachian Ins. Co. v. Rivcom Corp.*, 130 Cal. App. 3d 818 (1982).

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necessity of protective legislation. An insured should not be relegated to relying upon an insurer's *voluntary* provision of basic procedural protections in conjunction with the EUO.

Prior to SB 658's passage, the insurance industry opposed, as unduly restrictive, the bill's requirement that the EUO be limited to securing information that is "relevant and reasonably necessary to process or investigate the claim." The contention advanced was that this standard "is even more restrictive than would be allowed under rules of discovery."<sup>22</sup>

Under California law, a party to a lawsuit may depose a witness not only as to "relevant" matters, but also matters that are "reasonably calculated to lead to the discovery of admissible evidence."<sup>23</sup> The definition of "relevant evidence" found in the Evidence Code is not easily transplanted to an insurance claim. "Relevant evidence" is defined in the Evidence Code as "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action."<sup>24</sup> For nonfraudulent claims, the disputed facts are clear. For example, the insured may value certain property at a different amount than the insurer. The investigation of suspicious claims, on the other hand, does not always lend itself to such clear categorization.

In reality, it is unlikely an insurer will be hampered in its investigation because of the "relevant and reasonably necessary" language. This is because, prior to the imposition of any formal statutory requirements, the courts repeatedly inferred a requirement that the EUO be conducted on subjects described by various courts as "proper,"<sup>25</sup> "material,"<sup>26</sup> "pertinent,"<sup>27</sup> or "relevant."<sup>28</sup> Indeed, the U.S. Supreme Court has held that "every interrogatory that was relevant and pertinent in such an examination [under oath] was material, in the sense that a true answer to it was of the substance of the obligation of the assured."<sup>29</sup> Similarly, the California Supreme Court held it reasonable to require the insured to submit to an "examination under oath touching all matters material to the adjustment of the loss."<sup>30</sup> Other jurisdictions are in accord, finding that the insurer is "limited by a rule of reasonableness and specificity" and may not, for example, "roam at will through all of the insured's financial records."<sup>31</sup>

The U.S. Supreme Court has also demonstrated its willingness to support an insured's refusal to answer immaterial questions at the EUO. In one decision, the Court noted, "We are unable to perceive that the questions proposed had any legitimate bearing upon the inquiry, what was the actual loss sustained in

consequence of the fire."<sup>32</sup>

In addition, Section 2071.1 contemplates both state and federal evidentiary considerations. Under federal law, "discovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible bearing upon the subject matter of th[e] action."<sup>33</sup> Under this standard, the insurer should be entitled to explore any avenue of questioning that has a "possible bearing" upon the processing or investigation of the claim, including the credibility of the insured. This generally reflects the previous standards under which insurers operated; thus, there is nothing to suggest that insurers will be subject to a more rigorous standard under Section 2071.1.

Language excised from the draft of SB 658 was far more contentious than the final version of the statute. It required, for example, the insurer to pay the cost of the insured's attorney at the EUO. It further limited the EUO to eight hours in duration, regardless of the complexity or size of the claim and issues at stake. Since the bill as enacted does not contain these elements, there should be little genuine dispute regarding the majority of Section 2071.1's procedural requirements, particularly since they generally mirror the practices of insurers before the passage of SB 658. Still, one particular area of controversy exists.

### Not a Deposition

Having acknowledged the need for some procedural protections for the insured who submits to the EUO, the question arises whether Section 2071.1 overreached its goal by allowing insureds to assert at an EUO any objection that could be posed at a deposition under either state or federal law. (The original draft of the statute went even further, stating that "the applicable provisions of the Evidence Code and the Code of Civil Procedure relating to depositions shall govern an examination under oath" and that "all evidentiary objections, except as to the form of a question, are preserved.")

By failing to acknowledge the differences between EUOs and depositions, the statute threatens to engender needless litigation-type battles in a nonlitigation setting—the adjustment and investigation of an insurance claim. This result is surely not what the authors of SB 658 intended.

Is the California Legislature under the misimpression that the EUO is just a deposition by another name? If so, it is not the only branch of government that has difficulty keeping the two proceedings separate. One court referred to the EUO as a "deposition under oath."<sup>34</sup> In fact, a deposition and the EUO are distinct proceedings that do not

necessarily serve the same purposes and should not be subject to the same procedural rules. This principle is recognized in other jurisdictions,<sup>35</sup> with one court proclaiming that depositions and examinations under oath are "horse[s] of a different color" that serve "vastly different purposes."<sup>36</sup>

Although both proceedings involve the questioning—usually by an attorney—of an individual who has taken an oath to tell the truth, and both generally provide for the stenographic recording of the testimony,<sup>37</sup> the differences are numerous:

- 1) Insureds have a *contractual* obligation to submit to the EUO. That obligation is part of the consideration given for the insurance contract; if breached, "the insurer would be deprived of a valuable right for which it had contracted."<sup>38</sup>
- 2) Typically an attorney representing the insurance company conducts the EUO.<sup>39</sup> The insured may or may not be represented by counsel. If represented by counsel, there is no provision allowing cross-examination of insureds by their own attorney. In contrast, at a deposition, both parties are entitled to pose questions to a witness or a party.

This emphasizes one of the fundamental differences between the two proceedings: A deposition is a discovery tool available equally to the parties to the litigation. The EUO is not designed to provide discovery for both parties. It is solely the tool of the insurer and its agents, designed to aid in the investigation of a claim and to ferret out potentially fraudulent claims. Because the EUO is not a legal proceeding, the parties should not have all the same rights and obligations that they have as part of a lawsuit.

- 3) An insurer is entitled to examine insureds separately. This right has been deemed a "valuable truth-finding technique" that greatly enhances the insurer's ability to discover the true facts and assess the veracity of the insureds' claims—and may discourage or prevent fraud: "[S]equestration is (next to cross-examination) one of the greatest engines that the skill of man has ever invented for the detection of liars."<sup>40</sup> In contrast, a party to a lawsuit has a right to attend all depositions.<sup>41</sup>

- 4) Insurance policies may require the insured to volunteer information pertinent to the claim during the EUO. No such obligation is imposed upon a party in a deposition.<sup>42</sup>

- 5) Discovery disputes, including those that address the propriety of objections lodged at a deposition, may be submitted to the court for resolution, in the form of a motion to compel or a motion for protective order. There is no immediate remedy available to the insurer that is faced with an insured's assertion of improper objections at the EUO. Instead,

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Section 2071.1 merely cautions, in general language, that “if as a result of asserting an objection an insured fails to provide an answer to a material question, and that failure prevents the insurer from being able to determine the extent of loss and validity of the claim, the rights of the insured may be affected.”<sup>43</sup>

6) Parties to litigation have a wide array of discovery methods available to them, including the ability to subpoena third-party witnesses to testify at a deposition. The insurer investigating a claim is not so well equipped. This lack of a full complement of discovery tools, coupled with the fact that fraudulent claims may be extremely difficult to detect, suggests that insurers require greater latitude in examining their insureds at the EUO than what is afforded at a deposition.

7) The insurer is under state mandate to investigate and take appropriate measures to combat insurance fraud.<sup>44</sup> The EUO is a means to comply with these obligations.

In light of these clear distinctions, why introduce into the EUO proceeding the insured’s right to assert “any objection that can be made in a deposition under state or federal law”? Presumably, insureds now will be within their rights to object when a question calls for a narration or lengthy explanation, or when it is stated in the conjunctive or disjunctive. These type of objections have no place in the EUO, which is a nonlitigation investigatory tool of the insurance company.

Further, allowing the insured to assert objections under both state and federal law at the EUO carries the potential for tremendous confusion. For example, in *Feldman v. Allstate Insurance Company*, an unpublished decision of the U.S. District Court for the Central District of California,<sup>45</sup> a claims investigation disclosed that the insured misrepresented the value of property that was the subject of his claim. Among the evidence adduced to support that position was a tape recording made by the insured’s former spouse. The insured challenged the evidence on the basis that it was unlawfully recorded without his knowledge and invaded his right to privacy. However, state and federal laws differed on the legality of the tape recording; further, the Ninth Circuit permits the admission of recorded communications when such recordings were legally made under federal law, even though the recordings were illegal under state law.<sup>46</sup> For that reason, the court considered the evidence.

The *Feldman* case was decided before the new procedural rules applicable to EUOs took effect. An insured now may raise objections at the EUO to questions concerning a matter that the insured believed was a confidential communication and that unknowingly

and impermissibly was recorded. Would the legality of the recording, and the propriety in objecting to questions concerning it, be judged under state or federal law? Section 2071.1 does not answer that question, nor other concerns about fundamental differences between state and federal discovery that may confuse both the insurer and the insured alike when the two judicial systems are combined for the purpose of the EUO proceeding.

Ironically, forcing EUOs into a litigation mode appears to undermine the objective that insurance benefits be provided “without resort to unnecessary litigation.”<sup>47</sup> Whether it also unwittingly hamstring the insurance company’s ability to investigate and detect insurance fraud, as required by the Department of Insurance, remains uncertain. In the past, the legislature and the executive branch have been sensitive to the particular needs of insurance companies in investigating fraud.

For example, the California Standard Form Fire Insurance Policy imposes a one-year statute of limitations upon filing suit after inception of the loss. The legislature enacted a shortened limitations period to deter fraudulent claims.<sup>48</sup> In addition, although an insurer that denies a first-party claim, in whole or in part, must provide the insured with a written statement listing all grounds for denial as well as their factual and legal bases, the Department of Insurance makes clear that this requirement does not compel the insurer to disclose information “that could reasonably be expected to alert a claimant to the fact that the subject claim is being investigated as a suspected fraudulent claim.”<sup>49</sup>

Similarly, under the revised California Standard Form Fire Insurance Policy, an insurer must notify insureds of their right to demand copies of all “claim-related documents”; however, the insurer is not required to provide “documents that indicate fraud by the insured.”<sup>50</sup>

Clearly, because of the many unique qualities of the EUO, the insurer should not be confined to the same restrictions that are placed upon depositions, let alone additional restrictions. In that regard, it is somewhat disturbing that the state Senate Committee on Insurance articulated one objective of SB 658 as preventing “insurer fishing expeditions.”<sup>51</sup> The California Supreme Court determined over 40 years ago that an attorney may legitimately undertake such “fishing expeditions” during depositions under the liberal rules of discovery.<sup>52</sup> It is unlikely that the legislature intended to restrict the scope of EUOs even further than depositions.

Although far from a panacea, Section 2071.1 serves a laudatory purpose. For the

first time in more than 100 years, an insurer is required to provide basic information to its insured regarding the nature and scope of the procedure for sworn examinations under oath. However, the legislature unfortunately capitulated to the suggestion that the EUO be treated as the equivalent of a deposition and be subjected to the same evidentiary objections. This decision apparently stemmed from a desire to curb the “unfettered freedom” of insurers in the conduct of such examinations. However, this goal requires one to ignore the plethora of authorities that imposed a reasonableness standard on the scope of the EUO as well as the many statutory prohibitions against unfair practices. The future will reveal whether the harm from this aspect of the statute outweighs its many benefits. ■

<sup>1</sup> INS. CODE §790.031.

<sup>2</sup> The statute does not impose any deadline for making these corrections, and it is uncertain whether the courts will enforce an insurer's attempt to limit the time in which to make corrections. INS. CODE §2071.1.

<sup>3</sup> Claffin v. Commonwealth Ins. Co., 110 U.S. 81, 94-95 (1884).

<sup>4</sup> Hickman v. London Assurance Corp., 184 Cal. 524, 529-30 (1920).

<sup>5</sup> *Id.* at 530 (citing Connecticut Fire Ins. Co. v. George, 52 Okla. 432 (1915)).

<sup>6</sup> West v. State Farm, 868 F. 2d 348, 351 (9th Cir. 1988).

<sup>7</sup> For example, if the insured submits a proof of loss that is unclear or contains numerous inaccuracies, or fails to provide adequate documentation, the EUO proceeding may assist in resolving outstanding questions. *See* Globe Indem. Co. v. Superior Court, 6 Cal. App. 4th 725, 731 (1992) (“The right to require the insured to submit to an examination under oath concerning all proper subjects of inquiry is reasonable as a matter of law.”).

<sup>8</sup> *See, e.g.*, Insurance Cos. v. Weides, 81 U.S. 375 (1871); Claffin, 110 U.S. 81; Hickman, 184 Cal. 524; Tomaselli v. Transamerica Ins. Co., 25 Cal. App. 4th 1269, 1288 (1994) (“The taking of the EUO is a recognized and acceptable practice in claims investigation.”).

<sup>9</sup> *See, e.g.*, Globe Indem. Co., 6 Cal. App. 4th 725 (court upheld EUO requirement in insurance policy providing uninsured motorist benefits).

<sup>10</sup> *Cf.* INS. CODE §10350.10 (entitles insurer to conduct “physical” examinations as often as may reasonably be required).

<sup>11</sup> 1909 Cal. Stat. ch. 267, at 404.

<sup>12</sup> The current California Standard Form Fire Insurance Policy is set forth in Insurance Code §2071. The policy became mandatory in 1949 with the enactment of Insurance Code §2070.

<sup>13</sup> Bergeron v. The Employers Fire Ins. Co., 115 Cal. 672 (1931), and cases cited therein.

<sup>14</sup> 10 CAL. CODE REGS. §§2695.1 *et seq.*

<sup>15</sup> *See* Tomaselli v. Transamerica Ins. Co., 25 Cal. App. 4th 1269, 1281 (1994).

<sup>16</sup> *Hearing on S.B. 658, Senate Committee on Insurance* (May 16, 2001) (comments by the American Insurance Association).

<sup>17</sup> Gray v. Zurich Ins. Co., 65 Cal. 2d 263, 273 (1966).

<sup>18</sup> An insured is not always well served by having representation at the EUO. *See* West v. State Farm, 868 F. 2d 348 (9th Cir. 1988).

<sup>19</sup> *See* Hickman v. London Assurance Corp., 184 Cal. 524, 533 (1920); *see also* Bergeron v. The Employers' Fire Ins. Co., 115 Cal. App. 672, 674-76 (1931).

<sup>20</sup> *Gipps Brewing Corp. v. Central Mfrs' Mut. Ins. Co.*, 147 F. 2d 6, 13 (7th Cir. 1945).

<sup>21</sup> *Chateau Chamberay Homeowners Assoc. v. Associated Int'l Ins. Co.*, 90 Cal. App. 4th 335, 348 (2001); *Guebara v. Allstate Ins. Co.*, 237 F. 3d 987, 996 (9th Cir. 2001).

<sup>22</sup> *Hearing on S.B. 658, Senate Committee on Insurance* (May 16, 2001) (comments by the American Insurance Association).

<sup>23</sup> CODE CIV. PROC. §2017(a).

<sup>24</sup> EVID. CODE §210.

<sup>25</sup> *Globe Indem. Co. v. Superior Court*, 6 Cal. App. 4th 725, 731 (1992).

<sup>26</sup> *Robinson v. National Auto. & Cas. Ins. Co.*, 132 Cal. App. 2d 709, 716 (1955). *See also* *Hickman v. London Assurance Corp.*, 184 Cal. 524, 529-30 (1920); *Gipps Brewing Corp. v. Central Mfrs' Mut. Ins. Co.*, 147 F. 2d 6, 13 (7th Cir. 1945).

<sup>27</sup> *Insurance Cos. v. Weides*, 81 U.S. 375, 381 (1871). *See also* *Claffin v. Commonwealth Ins. Co.*, 110 U.S. 81, 94 (1884).

<sup>28</sup> *Claffin*, 110 U.S. at 94.

<sup>29</sup> *Id.*

<sup>30</sup> *Hickman*, 184 Cal. at 529.

<sup>31</sup> *Stover v. Aetna Cas. & Sur. Co.*, 658 F. Supp. 156, 160 (S.D. W. Va. 1987).

<sup>32</sup> *Weides*, 81 U.S. at 381.

<sup>33</sup> *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283 (C.D. Cal. 1998).

<sup>34</sup> *Tomaselli v. Transamerica Ins. Co.*, 25 Cal. App. 4th 1269, 1288 (1994). *Cf.* *United States Fid. & Guar. Co. v. Welch*, 854 F. 2d 459, 461 (11th Cir. 1988) (Lower court's reference to “deposition taken under the policy” purportedly “did not confuse the two procedures, but was merely using a synonym referring to oral examination under oath not taken at trial but before trial.”).

<sup>35</sup> *Welch*, 854 F. 2d at 461; *Ahmadi v. Allstate Ins. Co.*, 22 P. 3d 576 (Colo. 2001); *Goldman v. State Farm Ins. Co.*, 660 So. 2d 300, 305 (Fla. 1995).

<sup>36</sup> *Goldman*, 660 So. 2d at 302 (citing lower court's description).

<sup>37</sup> *Globe Indem. Co. v. Superior Court*, 6 Cal. App. 4th 725, 730 (1992).

<sup>38</sup> APPELMAN, 5A INSURANCE LAW & PRACTICE §3549. *See also* *First Nat'l Ins. Co. v. FDIC*, 977 F. Supp. 1051, 1054 (S.D. Cal. 1977).

<sup>39</sup> *See, e.g.*, *Robinson v. National Auto. & Cas. Ins. Co.*, 132 Cal. App. 2d 709, 711 (1955); *State Farm Ins. Co. v. Tan*, 691 F. Supp. 1271 (S.D. Cal. 1988).

<sup>40</sup> *Tan*, 691 F. Supp. at 1273; *Goldman*, 660 So. 2d at 302.

<sup>41</sup> CODE CIV. PROC. §2025(i) (12).

<sup>42</sup> *Goldman*, 660 So. 2d 300.

<sup>43</sup> INS. CODE §2071.1.

<sup>44</sup> INS. CODE §§1871 *et seq.*; 26 CAL. CODE REGS. §2695.1 (a) (3) & (4). Regulations promulgated by the Department of Insurance require that insurers develop an “integrated corporate anti-fraud strategy.” 26 CAL. CODE REGS. §2698.42.

<sup>45</sup> *Feldman v. Allstate Ins. Co.*, 2001 U.S. Dist. LEXIS 16021 (C.D. Cal. 2001) (unpublished).

<sup>46</sup> *Id.* at \*8 (citing *United States v. Adams*, 694 F. 2d 200, 201 (9th Cir. 1982)).

<sup>47</sup> *Rattan v. United States Auto. Ass'n*, 84 Cal. App. 4th 715, 722 (2000).

<sup>48</sup> *Prudential-LMI Commercial Ins. v. Superior Court*, 51 Cal. 3d 674, 682 (1990).

<sup>49</sup> 10 CAL. CODE REGS. §2695.7(b) (1) & (2).

<sup>50</sup> INS. CODE §2070.

<sup>51</sup> *Hearing on S.B. 658, Senate Committee on Insurance* (May 16, 2001).

<sup>52</sup> *Greyhound Corp. v. Superior Court*, 56 Cal. 2d 355, 385-86. (1961).

# INSURANCE EXPERT

## 14 YEARS CLAIM EXPERIENCE

Includes suit supervisor with 7 claimpersons. 24 years coverage/bad faith attorney with over 1,000 written opinions, 23 published, and unpublished decisions.

## QUALIFIED EXPERT TESTIMONY

In federal and state courts (35 times) for both insureds and insurers on first and third party bad faith, advice of counsel, malpractice, life and disability, bond, and insurance fraud.

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