CALIFORNIA INSURANCE LAW

2010 Update

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Date	Case	Holding/Significance
12/30/2009	*Baker v. National Interstate Ins. Co.* 180 Cal.App.4th 1319	"Products-completed operations hazard" exclusion was found to unambiguously bar coverage for bodily injury or property damage arising from either the insured's product or work. The use of the disjunctive conjunction "or" within the definition of the exclusion was found to relate to two distinct risks. Negligent inspection of a bus is a work-related, "completed operation," regardless of whether the inspection was related to a product. Policy type: General liability
01/12/2010	*Forecast Homes, Inc. v. Steadfast Ins. Co.* 181 Cal.App.4th 1466	Additional insured sought to establish exhaustion of an SIR through its own payments. The Steadfast policy, however, only allowed exhaustion of the SIR through payments made by the named insured. The additional insured argued that the SIR language was at least ambiguous as to what entity could make payments to satisfy its provisions. The additional insured also made public policy argument as to why the provisions should be ignored. The court rejected both arguments, upholding summary judgment in Steadfast's favor. Policy type: General liability

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01/19/2010	*Nieto v. Blue Shield of California Life & Health Ins. Co.* 181 Cal.App.4th 60	Insurer allowed to rescind a policy where the insured made material misrepresentations in the insurance application, regardless of the applicant's lack of intent to deceive. Even where the application was not endorsed or attached to the policy, Insurance Code §§ 10113 and 10381.5 did not bar rescission because of fraudulent misrepresentation made by the insured. Policy type: Health
01/21/2010	*Total Call International, Inc. v. Peerless Ins. Co.* 181 Cal.App.4th 161	Statement in insured's advertising that did not specifically reference the allegedly injured underlying plaintiff was not "advertising injury" under the terms of the policy. Coverage was also barred by a nonconformity exclusion which unambiguously barred coverage for third party claims predicated on allegations that the insured's advertising misrepresents the quality or price of the insured's own product. Policy type: General liability
01/21/2010	*Superior Dispatch, Inc. v. Ins. Corp. of New York* 181 Cal.App.4th 175	Insurer had a duty to provide notice of contractual limitations provisions to the insured regardless of whether the insured is represented by counsel. Whether the insured reasonably relied on the failure

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		to provide notice created a triable question of fact. Policy type: Cargo liability
01/26/2010	*Fire Ins. Exch. v. Sup. Ct. (Bourguignon)* 181 Cal.App.4th 388	The insured's construction on a neighbor's property was not an "accident" despite the mistaken belief that there was a right to do so. The mistaken belief in a legal right to act does not transform an intentional act into an accident. Policy type: Homeowner's
01/27/2010	*State Farm General Ins. Co. v. JT's Frames, Inc.* 181 Cal.App.4th 429	Practice of transmitting unsolicited faxes (fax blasting) was not deemed an advertising injury since it did not violate the right of privacy as required in the operative policy definition. Moreover, the use of another's fax machine or toner was not considered "property damage caused by an occurrence" since fax blasting is a deliberate and intentional act. Policy type: General liability
01/28/2010	*American International Underwriters Ins. Co. v. American Guarantee & Liability Ins. Co.* 181 Cal.App.4th 616	Where the insured took no possession or control over trucks used on a construction project, the insured did not "hire" the subcontractor's trucks for purposes of extending liability coverage to the subcontractor. Policy type: Commercial Auto and Trucker

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02/22/2010	*Interstate Fire & Cas. Ins. Co. v. Cleveland Wrecking Co.* 182 Cal.App.4th 23	Subcontractor's good faith settlement with claimant did not bar insurer's subrogation claim based on contractual indemnity obligations contained in subcontract. Insurer was found to be in a superior equitable position to the subcontractor since the third party claim arose from subcontractor's negligence. Policy type: General liability
03/03/2010	*City of Laguna Beach v. California Ins. Guarantee Assn.* 182 Cal.App.4th 711	City was not entitled to reimbursement from CIGA for an employee's injury exceeding the SIR. Where the insolvent insurer's policy covered only a portion of the time period during which the injury occurred and the City had no excess coverage for the remaining period, the City was its own insurer for the uninsured period. Under Insurance Code § 1063.1(c)(8), the City's self-insured status constituted other insurance and therefore CIGA had no statutory obligation to pay any portion of the benefits due under the insolvent insurer's policy. Policy type: Workers' Compensation
03/10/2010	*Scottsdale Ins. Co. v. Century Sur. Co.* 182 Cal.App.4th 1023	In an equitable contribution action, an insurer that had not paid more than its fair share was not entitled to any contribution, even against a

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		non-contributing insurer. The insurer seeking contribution was found to have the burden of establishing the amount of its fair share and that it paid more than its fair share under allocation agreements it made with other contributing insurers. Policy type: General liability
03/17/2010	*PMA Capital Ins. Co. v. American Safety Indem. Co.* 695 F.Supp.2d 1124 (E.D.Cal.)	The only relevant occurrence under the target policy was found to be the insured's negligent work. Where the policy required that both the occurrence and property damage take place during the policy period, an insurer seeking contribution was required to establish that the insured's negligent work happened during the policy period. Since the project was completed before inception of the subject policy, no coverage was afforded. Policy type: General liability
03/22/2010	*Gray v. Begley* 182. Cal.App.4th 1509	An insurer that defended under a reservation of rights had standing to intervene in the liability action to protect its own interests after the insured and claimant reached a settlement without the insurer's participation. Policy type: General liability

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03/23/2010	*Amerigraphics, Inc. v. Mercury Cas. Co.* 182 Cal.App.4th 1538	Insured was entitled to coverage under a business interruption clause for ongoing operating expenses even though the business was operating at a loss prior to the event that suspended business operations. Interruption clause provided coverage for both lost profits and for ongoing expenses incurred during the period of suspended business. Policy type: Business Special Multi-Peril
03/24/2010	*Intergulf Development v. Sup. Ct. (Interstate Fire & Cas. Co.)* 183 Cal.App.4th 16	When insured filed breach of contract and bad faith action against insurer after insurer failed to appoint independent *Cumis* counsel, the court required that the issue of the insurer's alleged breach be resolved before arbitration of the fee dispute as mandated by Insurance Code § 2860(c). Policy type: General liability
03/24/2010	*United Enterprises, Inc. v. Sup. Ct. (Royal Indem. Co.)* 183 Cal.App.4th 1004	Insurer's declaratory relief action against the insured on the duty to defend was stayed because the factual issues to be resolved in the declaratory relief action overlapped with issues to be resolved in the underlying litigation. Policy type: General liability

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03/26/2010	*Risely v. Interinsurance Exch. of the Automobile Club* 183 Cal.App.4th 196	An insurer who provided a defense under one policy but denied as to a second policy was not insulated from liability for breach of the duty to defend as to the second policy. The limits of the first were insufficient to satisfy the subject claim. Each policy was found to provide a separate duty to defend. As a result, the court ruled that the insurer could be bound by a stipulated judgment that its insured entered into after the breach under the second policy, regardless of the fact that the insurer provided a defense under the first policy. Policy type: Homeowner's
03/30/2010	*Dominguez v. Financial Indem. Co.* 183 Cal.App.4th 388	In an automobile policy, any limitation on coverage for permissive users must be conspicuous, plain and clear to be enforceable. Though the subject had no definition of "permissive user," the coverage limitation was sufficient where the coverage was explicitly set out within the insuring clause of the policy. Policy type: Automobile
04/05/2010	*Hyundai Motor America v. National Union* 600 F.3d 1092	A patent infringement claim concerning the underlying product itself was not found to be an advertising injury. However, a claim alleging infringement of a patented advertising method created a

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		potential for coverage under the policy's definition of advertising injury. Policy type: General liability
05/26/2010	*Barnett v. First Nat. Ins. Co. of America* 184 Cal.App.4th 1454	A prevailing insurer was entitled to recover expert witness fees incurred after section 998 settlement offer to insured husband and wife. Joint settlement offer was valid regardless of separate injuries where the award would have been community property. Policy type: Homeowner's
06/03/2010	*Pennsylvania Gen. Ins. Co. v. American Safety Indem. Co.* 185 Cal.App.4th 1515	A "Pre-Existing Injury or Damage Exclusion" was found to be unambiguous and did not act to preclude coverage for damages resulting from work performed before the policy period. The court applied the exclusion only to the injury or damage resulting from the conduct, not the causal conduct itself. Policy type: General liability
06/11/2010	*Legacy Vulcan Corp. v. Sup. Ct.* 185 Cal.App.4th 677 (previously published at 184.Cal.App.4th 285)	Where risk was not potentially covered by underlying primary, the umbrella was found to have a potential for coverage and was required to provide a defense. The umbrella defense provisions were not dependent

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		on underlying exhaustion. Moreover, umbrella defense obligations were not dependent on horizontal exhaustion of underlying insurance absent contractual language to that effect. Policy type: Excess Catastrophe
06/15/2010	*Clarendon America Ins. Co. v. North American Capacity Ins. Co.* 2010 WL 2377835	On summary judgment, insurer did not meet its burden of showing that insured had no reasonable expectation that “per claim” SIR applied to the subject construction defect claim as a whole, and not to each allegedly defective home making up part of the subject claim. Policy type: General liability
06/17/2010	*Minkler v. Safeco Ins. Co. of America* 49 Cal.4th 315	Separation of insureds provisions read in conjunction with an exclusion barring coverage for all insureds based on intentional acts of any insured was found to create an ambiguity as to the exclusion. As a result, the exclusion was not applied. Policy type: Homeowner’s