

## INSURANCE CASELAW ROUNDUP (4/3/09)

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The following are some notable California insurance cases that have come out earlier this year.

**Claims administrator determined to owe duty to excess carrier for negligent mishandling of workers' compensation claim:** Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Intergrated Serv. Grp, Inc., 171 Cal.

App. 4th 35 (2009): The claims administrator for insured bank settled a workers' compensation claim and authorized surgery that was not recommended by its own expert. As a result of complications from surgery, the bank employee became a paraplegic. In a lawsuit initiated by the excess carrier against the claims administrator, the excess carrier sued on theories of negligence, equitable subrogation, and breach of contract. The court found that the claims administrator owed a duty of care to the bank's excess carrier that was derivative of its duty to reasonably handle claims owed to the bank. The court rejected the argument that because the bank owed no duty to its excess carrier, the bank's claims administrator owes no duty to the excess carrier. (Opinion [here](#).)

**Intervening Factors Held to Preclude Application of Motor Vehicle Exclusion:** Safeco Ins. Co. of America

v. Parks, 170 Cal. App. 4th 992 (2009): Insured's renter's policy contained the following exclusion for damages "arising out of the ownership, maintenance, use, loading or unloading of...[¶] motor vehicles...owned or operated by or rented or loaned to an insured." Insured's negligent driving of vehicle caused insured and claimant to get a ride in another vehicle, wherein claimant was subsequently abandoned on the roadside. Thereafter, claimant was struck by a passing car after walking over a mile on the roadside. Insured's negligent driving was not casually connected to claimant's eventual injuries which were too far attenuated from insured's negligence. Thus, the motor vehicle exclusion did not bar coverage. (Opinion [here](#).)

**Disclaimers for Vanishing Premium Life Insurance Policies Determined Insufficient:** Broberg v. The

Guardian Life Ins. Co. of America, 171 Cal. App. 4th 912 (2009): Insurer's sales brochure for insured stated that premiums would "vanish" for the 12th year of the policy's life. The brochure contained disclaimers that the figures were only neither estimated or guaranteed, and that actual future dividends depend on the company's actual future experience. The trial court found that this disclaimer was sufficient. The appellate court held that it was a question of fact of whether or not the insured, in light of the disclaimers, could justifiably rely on the vanishing premium representation. The court noted that at the very least, the disclaimer language was not conspicuous and thus the issue could not be decided as a matter of law. (Opinion [here](#).)

[Submitted by Guest Contributor: [Peter Sindhuphak](#) of [Barger & Wolen LLP](#).]

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