

INSURANCE CASELAW ROUNDUP (11/14/08)

Friday, November 14, 2008 at 11:18AM

The following is a list of recent insurance-related opinions issued in California:

Owner Who Could No Longer Work "Hands On" Held not "Totally Disabled" under Disability Policy to Perform Listed Duties of Buyer/Manager: Hecht v. Paul Revere Life Insurance Co., ___ Cal. App. 4th ___ (2nd App. Dist. Div. 6 11/5/08): Based upon Erreca v West States Life Ins. Co., 19 Cal. 2d 388 (1942), the trial court ruled that there were no triable issues of fact that appellant was not "totally disabled" to handle duties listed as "buyer/manager/office operations" though plaintiff owner could no longer perform "hands on" work due to chronic pain and lessened strength. Court of Appeal reviewed de novo and affirmed the trial court's finding. [Opinion [here.](#)]

Return of Premium on Surrendered Bail Bond not Permitted Where Remand was by Trial Court: Indian Lumbermens Mutual Insurance Company v. Alexander, ___ Cal. App. 4th ___ (2nd App. Dist. Div. 8 11/4/08) (holding that insurer and bail bond company was not required to refund premium for bail bond where criminal defendant was remanded to custody by trial court, not bail bond company, for out-of-state warrant). [Opinion [here.](#)]

Non-Arbitrable Question of Whether Claimant for UM Benefits is "Insured" Can Be Addressed by Court in Proceeding Initiated by Petition to Compel Arbitration: Bouton v. USAA Casualty Insurance Company, ___ Cal. App. 4th ___ (4th App. Dist. Div. 1 10/7/08): Appellate court reversed trial court's denial of petition to compel Section 11580.2(f) arbitration of UM benefits. While trial court denied petition on ground that it sought arbitration of non-arbitrable question of petitioner's status as "insured," appellate court held that trial court could and should have determined this question and that petitioner need not have filed a separate declaratory relief action to ascertain ability to obtain UM benefits. [Opinion [here.](#)]

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