Liability insurance and catastrophic loss

A search for additional insurance of negligent parties

By Lee S. Harris and Adrian Hern

When your client has suffered a catastrophic loss due to a vehicle collision, the search for additional insurance is often a major focus of the case. Frequently this requires a multi-level coverage review to get your client paid. Inadequate primary policy limits and coverage denial are two of the biggest culprits that must be dealt with. The search for additional coverage usually includes first-party insurance policies such as UIM (underinsured and uninsured motorist). Another layer of search involves third-party policies covering the party who caused the accident such as excess or umbrella insurance; including, umbrella/excess policies providing coverage that may sit "on top of" a wide variety of policies or umbrella/excess policies that "step" or "drop down" to provide coverage for gaps in primary coverage. A still further layer of search includes looking for insurance policies of additional negligent parties and insurance policies of vicariously liable parties such as employers. Employer commercial general liability (CGL) policies may also come into play due to "non-owned auto" clauses. When a primary defendant has a denial of liability coverage, the basis of the denial needs to be examined to see if it was proper or if there are options to force policy reformation to provide coverage. And, specific types of vehicular accidents such as those involving trucks and trucking trailers involve additional unique insurance opportunities with many types and layers of policies.

The discussion that follows reviews avenues of potential insurance that should be examined carefully in catastrophic injury cases.

Uninsured and Underinsured Motorist Coverage

Uninsured and Underinsured Motorist (UM/UIM) policies are probably the first place to look when the party that caused the accident has little or no insurance. UM/UIM in California is governed by Insurance Code section 11580.2. Policies related to the "victim" car including the owner, driver and any injured passenger should be reviewed.

Unfortunately, UM/UIM policies are frequently sold with low limits and are often minimum $15,000/30,000 policies. And, in California, UM/UIM does not stack so you can not add up policies; you can only collect on the highest available limit. The obligation of the UM/UIM carrier is also reduced by the payment received on other third-party policies.

One tactic for insurance companies was to delay or avoid UM/UIM payments

by forcing the insured into a stalled-out arbitration process. However, the tides have recently changed in favor of the injured party. An appellate court held that an insurer cannot use the arbitration process to "stonewall" UM/UIM claims. A UIM carrier has a duty to act in good faith. The statutory right to arbitrate does not preclude a finding of bad faith. When damages and liability are reasonably clear, the insurer is under a duty to attempt to effectuate a prompt and fair settlement.[1]

Umbrella and Excess insurance

Umbrella and Excess Liability insurance policies generally provide additional insurance above primary insurance limits to provide extra liability protection. In many cases the additional insurance is substantially greater than the primary policy. Umbrella and Excess policies with the same face amount can be written substantially differently. It is always important to read the policy to see what is actually covered. Although they are technically different forms of coverage, the line between Umbrella and Excess liability is often blurred. Excess insurance traditionally was limited in coverage scope to the coverage provided in the primary policy. Umbrella policies often provide coverage for events that would otherwise not be covered under the primary policy. In those situations, the Umbrella policy may step down or drop down to cover gaps in the primary policy. Policies that provide extra insurance coverage may be issued by an insurance company that is unrelated to the issuer of the primary policy or its broker. Obtaining a "policy face sheet" for the primary policy, therefore, isn't the end of the quest. There needs to be a specific inquiry and discovery about Umbrella and Excess insurance. And, the policy language needs to be examined carefully.

Commercial General Liability (CGL) Non-Owned Auto coverage

Coverage in Commercial General Liability (CGL) policies often exists for employees operating vehicles in the course and scope of employment either because it was added automatically or added by request for a nominal extra premium (for example, a Non-Owned Auto Rider). If the CGL policy excludes auto coverage, the prudent client advocate should ask follow-up questions about: whether or not the business owner asked for the relevant coverage and whether it was actually issued. Investigate to see if the insurer or agent made a mistake in the coverage the insurer provided versus the coverage the employer expected. If a policy is in place, then make sure the carrier was given notice of the claim. Insurers can be responsible for their own mistake as well as the conduct of their agents acting under ostensible authority.

If a coverage mistake was made, check into whether the insurer made the mistake and then abandoned the insured in its hour of need. Sadly, insurers are known to abandon their insureds in such situations.

The small business insured risks insolvency if it is forced to defend and indemnify itself because the insurer walked away and claimed no coverage. A small business goes even further into the hole if it has to both sue its insurer for coverage and finance its defense in the third-party suit. Insurers often take advantage of this duress and bargain on the insured dropping any claim for coverage. One solution to this rock-and-a-hard-place problem is for the insured to place responsibility on an agent and/or insurance company and assign claims as discussed later on in the article.

Reasonable expectations and coverage

Blindly accepting liability policy coverage turndowns by a defendant's insurance company without further investigation can be a big mistake. The insurer's refusal to honor its policy may in some cases be countered by an argument that coverage is mandated by the policyholder's reasonable expectations.

The policy should be examined with California case law governing the doctrine of reasonable expectations in mind. If an ambiguity in a policy exists, coverage may be found. Ambiguity arises when policy provisions and/or exclusions are unclear. As a general matter, an ambiguity arises if the language used is susceptible to having more than one reasonable meaning, one of which produced coverage.[2] Cases hold that the reasonableness of an insured's expectations of coverage is a question of law based exclusively on the policy language.[3]

In *Fireman's Fund Insurance Co. v. Allstate*[4], the court restated the law governing ambiguity:

> As a general rule, ambiguities and uncertainties in a policy of insurance are resolved in favor of the insured. 'Although we construe all provisions, conditions or exceptions that tend to limit liability strictly against the insurer …, strict construction does not mean strained construction. We may not, under the guise of strict construction, rewrite a policy to bind the insurer to a risk that it did not contemplate and for which it has not been paid.' The words used in a policy of insurance are to be construed according to the plain meaning a layman would ordinarily attach to them, and the policy is to be construed as a whole, each clause helping to interpret the other.[5]

Sometimes, correspondence from the agent to the insured gives a broader interpretation of the policy than the language contained in the policy form. Agents frequently use form cover letters to transmit policies. These cover letters may contain descriptions of policies different than the policies actually enclosed. Business-liability package cover letters may make improper references to auto coverage or exclusions.

Policy face sheets from the insurance company may not list one or more exclusions that the insurance company relies upon to deny coverage. In each of these cases, significant additional coverage may

result from a careful review of the policy documents, insurer/insured/agent communications or from questioning the broker.

Failure to inform of policy limitations and exclusions

The quasi-fiduciary duties owed by an insurer to its insured are governed by the contract of insurance. The implied covenant of good faith and fair dealing contained in every insurance contract prohibits an insurer from doing anything "to deprive the insured of the benefits of the policy."[6]

As such, exceptions, exclusions and limitations that impact on the extent of coverage an insured would reasonably expect under a policy must be called to the insured's attention "*clearly and plainly*" before an insurer can rely on those exclusions to limit coverage.[7] If the company or its agent misadvised the insured regarding the exclusionary language contained in the original policy, the company might not be able to rely upon those exclusions to relieve itself of the duty to first defend and then indemnify its insured for a claim made against it. In *Westrick v. State Farm Insurance*, the appellate court noted that the insurer has a duty to accurately describe the provisions of the insurance policy purchased by the insureds and must inform the insured of relevant exclusions in the policy.[8] The *Westrick* court also pointed out that "[i]t is a matter almost of common knowledge that a very small percentage of policy-holders are actually cognizant of the provisions of their policies … [and t]he insured confides implicitly in the agent securing the insurance."[9]

In addition, the *Westrick* court also examined the insured's testimony, his request for insurance, his previous questions related to insurance coverage, his long relationship with the insurance agency, and the foreseeability of harm. The court held that as between the agent and the insured, the agent had superior knowledge concerning the scope of coverage such that it was "only 'just and equitable' to require [the agent] to explain the limiting provisions to [the insured]."[10]

Accordingly, the court held that the insurer has a duty to reasonably "*inform an insured of the insured's rights and obligations under the insurance policy*."[11] The failure to do so, could bar the application of the asserted exclusion, thus bringing more coverage into the case.

Insurer's vicarious liability

Sometimes the overt mistakes of the insurer's agent can be imputed to the insurer giving rise to a vicarious liability tort action against the insurer.

Under California law, an agent has such authority as the principal actually or ostensibly confers on him. Actual authority is defined as "[s]uch [authority] as a principal intentionally confers upon the agent, or intentionally or by want of ordinary care, allows the agent to believe himself to possess."[12] Ostensible authority is defined as authority that "[a] principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess."[13] Put another way, vicarious liability may follow where the insured reasonably believes the individual is the agent of the insurer even if that is not technically the case.

An insurer, as any other employer, is vicariously liable under respondeat superior for tortious acts committed by its employees and other agents within the course and scope of their employment.[14] Thus, the insurer, as a principal, "may be vicariously liable for the torts of its agent if the insurer directed or authorized the agent to perform the tortious acts, or if it ratifies acts it did not originally authorize."[15] Also, pursuant to agency principals, an insurer will be held liable for its (the insurer's) agent's failure to inform an insured of limiting language contained in an insurance policy.[16]

In most cases the agent has binding authority to market insurance policies and solicit business on behalf of the company, explain policies and coverage provisions on behalf of the company, negotiate, prepare and submit insurance applications to the company, collect premium money from insureds for the company, and deliver the company's policies to its customers. Accordingly, the company is bound by its agent's representations, acts, or omissions pursuant to the doctrines of actual or ostensible authority. Thus, the company may be liable for its agent's failure to describe the limiting or exclusionary provisions of the insurance policy in question to its insureds. In short, the negligence of the insurer's agent with respect to placing and/or handling the policy can attach to the insurer and garner a claim for damages that can stand in the place of policy coverage. Additionally, where the agent/insurer's negligence created an underinsured policy, a disappointed insured could also trigger another cause of action for damages against the agent and the insurer by arguing the "breach of duty to deliver what was promised," as discussed next.

Breach of duty to deliver what was promised

This case typically presents where an insured asked for a type or extent of coverage and believes this coverage was provided via representations with the insurer/insurer's agent and finds out the hard way that the coverage limits asked for was not what the insured received. In these circumstances, the coverage often falls woefully short of the loss.

A principle that underlies the "failure to deliver the agreed-upon coverage" cases is that a disparity in knowledge may impose an affirmative duty of disclosure on the insurer or its agent, the failure of which would place tort liability on the insurer.[17] The Court of Appeals in *Westrick* reaffirmed this duty of the agent of an insurer with regard to exclusionary and limiting provisions in a policy of insurance. The court reasoned that the quasi-public nature of the insurance industry *imposes upon the insurer* a duty of good faith and

fair dealing. This requires the insurer to "[g]ive at least as much consideration to the [insured's] interest as it does to its own."[18] The failure to so disclose a (known or should have known) disparity of knowledge equates to a breach of its duty to its insured by the nonfeasance of withholding the information.[19] The *Butcher v. Truck Ins. Exch*. court stated:

> Absent some notice or warning, an insured should be able to rely on an agent's representations of coverage without independently verifying the accuracy of those representations by examining the relevant policy provisions. This is particularly true in view of the understandable reluctance of an insured to commence a study of the policy terms where even the courts have recognized that few if any terms of an insurance policy can be clearly and completely understood by persons untrained in insurance law.[20]

An insurance agent has an "obligation to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured."[21] As such, the law is well established in California that an agent's failure to deliver the agreed-upon coverage may constitute actionable negligence and the proximate cause of an injury.[22]

In short, the insurer's liability appears to rest on the doctrine of estoppel, which basically requires an insured to show justifiable and detrimental reliance on representations by the insurer/insurer's agent.[23] Once an insured demonstrates that an insurer knew of or should have known of a material misrepresentation in an application, the insurer may be estopped or barred by laches from asserting that as a defense.[24] Consequently, an insured can recover for its underlying loss through a tort claim against the insured's insurance carrier.

In sum, the prudent advocate would inquire into whether or not the insured had asked for more coverage and whether or not the policy limits the insured is currently stuck with were due to a mistake or a failure to properly advise.

Trucking accident insurance

In an accident involving a typical "big rig" truck there are a number of unique insurance possibilities that should be examined. These include investigating coverage on the "cab (or tractor)," the "trailer" and the "cargo container" or "van." The tractor, trailer and cargo van are often owned by different parties. The trip and some of the equipment may have been assembled by a "freight forwarder" who acts like a travel/booking agent for cargo. Each of these has an insurance policy (or should have). One insurance goal is for protection in liability claims such as personal injury lawsuits. Another goal is to insure cargo – typically through "inland marine" or similar cargo policies.

If an owner or operator of a "cab (or tractor)" "part" causes the harm, then their liability coverage would presumably provide coverage to that "part." If there isn't a liability policy on the cab or if it isn't enough for the accident and there isn't independent negligence by the owner/operator of the "other" parts, the question becomes – are the policies of each (or any) of the various parts responsible for the screw-up of the driver? The first place to look is the trailer's insurance. It may be "on the hook" under either California's permissive user statute or under specific interstate commerce insurance regulations.

Another avenue involves the two statutory extensions of coverage to "permissive users" to the "parts" of the trucking assembly where the negligent tractor driver was the only proximate cause of the harm. The first is the 1980 Motor Carrier Safety Act - MCS-90 Endorsement and is required in insurance policies for interstate carriers.[25] If a policy does not contain the mandated provision, the MCS-90 permissive user coverage is nonetheless part of the policy as a matter of law.[26] The second is California's permissive user statute (Ins. Code, § 11580.1) for policies issued in California.

The MCS-90 Endorsement is limited to interstate (as opposed to intrastate) commerce and provides coverage in several situations where traditional insurance would not apply. One example is when a truck that is not listed in the policy is involved in a collision.[27] The mandatory language of the endorsement reads that "the insurer agrees to pay ... any final judgment recovered resulting from negligence ... regardless of whether or not each motor vehicle is specifically described in the policy." Coverage of a non-covered vehicle accomplishes the MCS-90's purpose of protecting members of the public. However, it is not clear that the coverage amounts under MCS-90 stack, so examining that issue may not add anything in many cases where the tractor driver already has an underlying MCS-90 compliant policy.[28]

With respect to the second statutory extension of coverage, the California permissive user statute (Ins. Code, § 11580.1) requires that automobile insurance policies cover permissive drivers under the owner's liability policy. However, the insurer can limit permissive user coverage by use of clear and conspicuous language to $15,000/$30,000/$5,000.[29] In order to trigger this permissive use coverage, the victim must, in general, sue both the owner and driver.[30]

Undoubtedly, one will see a challenge of one's application of the permissive-user statutes. However, such attempts are traditionally disfavored. "As the above quoted statutory provisions are part of a well-entrenched sound rule of public policy, any attempt to exclude coverage for permissive users of insured automobiles is viewed with disfavor. All ambiguities and doubts must be resolved in favor of coverage.[31] Exclusions must be construed strictly against the insurer.[32]

The cargo container (an intermodal container – also known as a container, freight container, ISO container, shipping container, hi-cube container, box, sea container, container van) insurance

should also be examined. Finding applicable coverage may be difficult. The cargo van may not have third-party liability insurance. Instead, the van may only have "inland marine" coverage covering damage to the cargo. Note, though, an insurance broker may have offered, requested or obtained for its insured third-party liability insurance in addition to inland marine coverage. If there is liability insurance and there was not negligence specifically attaching to the cargo van, the question then becomes, do "permissive user" rules cause the cargo container's liability policy to cover the driver of the cab or other negligent party? The answer is uncertain.

Freight forwarder insurance

Freight forwarders may also have liability insurance in place. Their conduct in arranging the transit including possibly selecting the driver of the rig may subject them to liability. An injured party should examine whether/how a freight forwarder was involved and what insurance exists. Policies might include a third-party liability policy and/or a contingent auto liability policy. A contingent auto liability policy, for example, may be liable to pay for damages incurred when someone is injured during freight forwarding operations by contract workers arranged by the freight forwarder.

Assignment of claims/covenant not to execute

An abandoned insured may be willing to allow a plaintiff to obtain a court-entered judgment accompanied by a separate assignment of rights and covenant not to execute the judgment against the insured's assets. Using an assignment and covenant is often the best way to translate an insurer's coverage mistake into compensation for a plaintiff. A judgment with an assignment and covenant not to execute, however, must be handled carefully and entails special considerations discussed next.

Follow-up litigation, in the form of an assigned breach-of-contract and bad-faith lawsuit inevitably results from a rejection of coverage that turns into a judgment assignment coupled with a covenant not to execute. Also, with some predictability, the insurance company will try to raise objections to the right of assignment and the validity of the "judgment."

In California, insurers' objections to an assignment of claims are mostly based upon allegations of victim/tortfeasor collusion in obtaining the judgment. The insurers usually claim that the victim and the tortfeasor-defendant (its insured) entered into an agreement to allow an excessive judgment in exchange for the assignment. Judgments entered pursuant to stipulation are the most suspect, but even judgments following a court trial may be open to question.[33] It has however been noted that "where the insurer tortiously refuses to defend and as a consequence the insured suffers a default judgment, the insurer is liable on the judgment and cannot rely on hindsight that a subsequent lawsuit establishes non-coverage."[34]

> Courts have for some time accepted the principle that an insured who is abandoned by its liability insurer is free to make the best settlement possible with the third party claimant, including a stipulated judgment with a covenant not to execute. Provided that such settlement is not unreasonable and is free from fraud or collusion, the insurer will be bound thereby.[35]

The seminal California case involving the assignment of a bad-faith claim from a tortfeasor-defendant to a plaintiff is *Samson v. Transamerica*[36]. The bad-faith defendant Transamerica Insurance Company argued that the assignment was invalid and the entire procedure demonstrated bad faith and collusion by the insured (aka tortfeasor-defendant), the plaintiffs, the co-insurer State Farm and the attorneys for all the parties. The Court of Appeals characterized Transamerica's claim as one that "boils down to a charge that the parties initially 'set up' the excess-of-policy judgment against it."[37]

The claim of collusion and bad faith in *Samson* was based on the fact that early in the lawsuit, the tortfeasor-defendant/insured and the plaintiffs had entered into a settlement where the plaintiffs signed a covenant not to execute against the defendant/insured. In exchange, the insured agreed to assign his cause of action against Transamerica to the plaintiffs. The plaintiff also received payment from State Farm on a primary policy of $100,000. Transamerica argued that it was not informed of this settlement agreement.

The *Samson* court rejected the "collusion" argument by Transamerica because Transamerica had not shown that the parties breached any duty or acted improperly in the conduct of the lawsuit.[38] Further, the *Samson* court noted that the California Supreme Court and the Court of Appeals:

> [H]ave frequently held that an insured breaches no duty to the insurance company when he assigns his rights against the company to the injured plaintiffs in return for a covenant not to execute. '[W]here the insurer has repudiated its obligation to defend[,] a defendant in the absence of fraud may, without forfeiture of this right to indemnity, settle with the plaintiff upon the best terms possible, taking a covenant not to execute.' When the insurer 'exposes its policyholder to the sharp thrust of personal liability' by breaching its obligations, the insured 'need not indulge in financial masochism….'[39]

The *Samson* court concluded that there was nothing fraudulent or collusive about the insured's assignment of his cause of action to the plaintiffs:

> As is in *Critz*, '[b]y executing the assignment, he attempt[ed] only to shield himself from the danger to which the company …exposed him.' He acted in his own self-interest after Transamerica's denial of coverage, as he had every right to do. Any resulting damage to Transamerica was caused not by [the defendant's] supposed misconduct but by Transamerica's own intransigence."[40]

In *Samson*, Transamerica also charged that the insured, the plaintiffs and State Farm had acted in collusion to inflate the size of the judgment against the insured in an attempt to create an excess-of-policy action against Transamerica. In support of this argument, Transamerica pointed to the fact that the insured had presented no defense during trial of the underlying action and did not cross examine any of the plaintiff's witnesses. In response, the *Samson* court stated that the insured "had no obligation to present what he may have thought was a useless defense."[41]

In other cases, insurers (citing *Moradi-Shalal v. Fireman's Fund Ins. Co.*[42]) have argued that an arbitrator's award by mutual acquiescence made the resulting judgment merely a "stipulated judgment" and not the requisite conclusive judicial determination.[43] However, that argument failed. The Court of Appeals rejected the insurer's argument that the only judgment which can satisfy the standard must flow from an actual adjudication of the issue of the insurance liability "in a court of law by a judge or jury." A judicial determination is a final and conclusive resolution of the liability issue. There-fore, the determination of the insured's liability by means of a judicial arbitration process, and the subsequent entry of a final judgment, was a sufficient judicial resolution of the insured's liability to the plaintiff that satisfied the requirement of *Moradi-Shalal*.[44]

Other defeated arguments include challenges to judgments solely from stipulations without arbitration or other merit-based renderings. The California Supreme Court has held that a stipulation of an insured's liability which was signed by the insurer, the insured and the third-party claimant, and which was entered as a judgment, also satisfied the requirement of a final and conclusive resolution of the underlying action and enabled the third-party claimant to bring an action for bad faith against the insurer under *Moradi-Shalal*.[45] Such was enough to overcome the insurer's motion for judgment on the pleadings which argued no final determination in the underlying action existed as it was a mere stipulated judgment. Thus, even a stipulated judgment, under proper circumstances, may be deemed to be a final judicial determination.

In short, the assignment of rights against the insurance company/covenant not to execute method is a powerful tool to translate mistaken coverage decisions into a pathway to make your client whole. However, the courts impose a case-by-case analysis of each settlement and related judgment to make sure the judgment is sufficiently credible to justify enforcement against the insurer.[46]

Conclusion

Liability without adequate insurance coverage is a common dead-end street for attorneys representing victims with catastrophic injuries. The search for coverage may end up being as important as, and more difficult than, the effort to prove liability. No one right answer exists for all cases. Each situation must be examined carefully to ensure that every insurance option for a full recovery is considered.


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[**Note:** *See www.plaintiffmagazine.com to read this article in its entirety with endnotes and citations.*]

Endnotes

[1] *Maslo v. Ameriprise Auto & Home Ins.*, 227 Cal.App.4th 626, 638-639 (2014) ("…an insurer may be liable for bad faith in failing to attempt to effectuate a prompt and fair settlement where it [] unreasonably demands arbitration…").
[2] *Clarendon Natl. Ins. Co. v. Insurance Co. of the West*, 186 Cal.App.4th 556, 573 (2010).
[3] See *Wolf Machinery Co. v. Ins. Co. of N. Am.*, 133 Cal.App.3d 324, 328-329 (1982); *Chamberlain v. Allstate Ins. Co.*, 931 F.2d 1361, 1366 (9th Cir. 1991); *Minkler v. Safeco Ins. Co. of America*, 49 Cal.4th 315, 321 (2010); California Insurance Law Handbook (John K. DiMugno and Paul E.B. Glada), §63:2, Standard of review: Interpretation of Insurance Policies (2015).
[4] *Fireman's Fund Insurance Co. v. Allstate*, 234 Cal.App.3d 1154 (1991)
[5] *Fireman's Fund Insurance Co. v. Allstate*, 234 Cal.App.3d 1154, 1168-1169 (1991) (internal citations omitted) and quoted with approval in *American Intern. Underwriters Ins. Co. v. American Guarantee and Liability Ins. Co.*, 181 Cal.App.4th 616, 629 (2010).
[6] *Fletcher v. Western Nat'l Life Ins. Co.*, 10 Cal.App.3d 376, 401 (1970) and *Gruenberg v. Aetna Ins. Co.*, 9 Cal. 3d 566, 575 (1973) and see Judicial Council of California Civil Jury Instructions, CACI 2330 (West 2015).
[7] *Logan v. John Hancock Mut. Life Ins. Co.*, 41 Cal.App.3d 988, 995 (1974), see also *Haynes v. Farmers Ins. Exchange*, 32 Cal.4th 1198, 1211-1212 (2004).
[8] *Westrick v. State Farm Ins. Co.*, 137 Cal.App.3d 685, 692 (1982).
[9] *Westrick v. State Farm Ins. Co.*, 137 Cal.App.3d 685, 692 (1982), see also *Haynes v. Farmers Ins. Exchange*, 32 Cal.4th 1198, 1210-1211 (2004).
[10] *Westrick v. State Farm Ins. Co.*, 137 Cal. App.3d 685, 692 (1982).
[11] *Westrick v. State Farm Ins. Co.*, 137 Cal.App.3d 685, 692 (1982) (emphasis added.)

[12] Cal. Civil Code § 2316 (Deerings 2015).
[13] Cal. Civil Code § 2317 (Deerings 2015).
[14] *Desai v. Farmers Ins.* Exchange, 47 Cal.App.4th 1110, 1118, 55 CR2d 276, 280 (1996) and cited with approval by *R & B Auto Center, Inc. v. Farmers Group, Inc.*, 140 Cal.App.4th 327, 337 (2006)
[15] *R & B Auto Ctr., Inc. v. Farmers Group, Inc*., 140 Cal.App.4th 327, 344 (2006) (internal quotes omitted).
[16] See California Practice Guide: Insurance Litigation Ch. 2-A (Hon. H. Walter Croskey, Christina J. Imre, Hon. Rex Heeseman (Ret.) and Jeffrey I. Ehrlich), Creation of Insurance Relationship (Nov. 2014) and see Cal. Ins. Code §§31 and 1621.
[17] *Butcher v. Truck Ins. Exch.*, 77 Cal.App.4th 1442, 1464-1465 (2000)
[18] *Westrick v. State Farm Ins. Co.*, 137 Cal. App.3d 685, 692 (1982).
[19] *Westrick v. State Farm Insurance*, 137 Cal.App.3d 685, 691-692 (1982); *Butcher v. Truck Ins. Exch.*, 77 Cal.App.4th 1442, 1462-1465 (2000).
[20] *Butcher v. Truck Ins. Exch.*, 77 Cal.App.4th 1442, 1462 (2000) (citations omitted).
[21] *Jones v. Grewe*, 189 Cal.App.3d 950, 954 (1987) and quoted with approval in *Pacific Rim Mechanical Contractors, Inc. v. Aon Risk Ins. Services West, Inc.*, 203 Cal.App.4th 1278, 1283 (2012).
[22] See *Desai v. Farmers Ins. Exchange*, 47 Cal.App.4th 1110, 1120 (1996); *Clement v. Smith*, 16 Cal.App.4th 39, 45 (1993); *Kurtz, Richards, Wilson & Co. v. Insurance Communicators Marketing Corp*., 12 Cal.App.4th 1249, 1257 (1993) (broker negligently represented that insured was not subject to Medicare provisions of federal statute); *Free v. Republic Ins. Co.*, 8 Cal.App.4th 1726, 1730 (1992) (negligent failure of agent to respond to homeowner's inquiry concerning adequacy of coverage limits to rebuild home); *Westrick v. State Farm Insurance*, 137 Cal.App.3d 685, 692 (1982); *Jackson v. Aetna Life & Casualty Co*., 93 Cal.App.3d 838, 840, 848 (1979) (negligent failure of agent to add lessor as additional insured party); *Greenfield v. Insurance Inc*., 19 Cal.App.3d 803 (1971) (negligent failure of agent to obtain the coverage requested by client); cf. *Eddy v. Sharp*, 199 Cal.App.3d 858, 866 (1988) (negligent failure of agent to include loss due to water backing up through drains or sewers in cover letter's listed exclusions); *Butcher v. Truck Ins. Exch.*, 77 Cal.App.4th 1442, 1462-1465 (2000).
[23] See *Preis v. American Indem. Co.*, 220 Cal.App.3d 752, 763 (1990) citing Rest.2d Agency § 8B.
[24] See *Barrera v. State Farm Mutual Automobile Ins. Co*. 71 Cal. 2d 659, 678 (1969) (insured intentionally and untruthfully denied having a history of a suspended license and after accident, insurance company rescinded the contract and denied coverage; held: insurer has duty to research the application for incorrect or mistaken information in the policy application and failing to do so, it was barred from defending its position on those grounds and was required to provide coverage).
[25] 49 U.S.C. §13906 (rev. 2013); 49 C.F.R. §387.7 (rev. 2009) and 49 C.F.R. §387.15 (rev. 2014).
[26] *Wildman v. Government Employees' Ins. Co.*, 48 Cal.2d 31, 39, 307 P.2d 359 (1957) (holding that an insurer could not write permissive user coverage out of an insurance policy; if a policy did not contain an express permissive user coverage provision, one would be read into the policy by function of law) and cited with approval in *Landeros v. Torres*, 206 Cal.App.4th 398, 406 (2012) (The provisions in former Vehicle Code sections 402 and 415 referred to by the Supreme Court are now contained in Vehicle Code sections 16450, 16451, 17150 and in Insurance Code section 11580.1, confirming that the public policy of California [as stated in *Wildman v. Government Employees' Ins. Co.*] has not changed.
[27] 49 C.F.R. §387.7 (rev. 2009).
[28] *Canal Ins. Co. v. Underwriters at Lloyd's London*, 435 F.3d 431, 442 n. 4 (3rd Cir. 2006); KeyCite *John Deere Ins. Co. v. Nueva*, 229 F.3d 853, 856-858 (9th Cir. 2000); *Carolina Cas. Ins. Co. v. Yeates*, 584 F.3d 868, 879 (10th Cir. 2009); ***T.H.E. Ins. Co. v. Larsen Intermodal Services, Inc.,*** 242 F.3d 667, 672 (5th Cir.2001); see e.g., *Global Hawk Ins. Co. v. Century-National Ins. Co.*, 203 Cal.App.4th 1458, 1464-1465, 1467 (2012); *Armstrong v. U.S. Fire Ins. Co.*, 606 F.Supp.2d 794, 825 (E.D. Tenn. 2009); *Zurich America Ins. v. Grand Avenue Transport*, 2010 WL 682530 *8-9 (N.D. Cal. 2010).
[29] Cal. Ins. Code §11580.1(b)(4); see Cal. Vehicle Code §16056 and *Haynes v. Farmers Insurance Exchange*, 32 Cal.4th 1198, 1205 (2004).
[30] See Cal. Vehicle Code §17152.
[31] *Metz v. Underwriters Ins. Co.*, 10 Cal.3d 45, 53-54 (2009); *Interinsurance Exchange of the Automobile Club of So. Cal. v. Ohio Cas. Ins. Co*., 58 Cal.2d 142, 152 (1962); *Brown v. Merlo*, 8 Cal.3d 855, 872 fn. 13 (1973); *Universal Underwriters Ins. Co. v. Gewirtz*, 5 Cal.3d 246, 251 (1971); *National Indemnity Co. v. Manley*, 53 Cal.App.3d 126, 133-134 (1975); *Jordan v. Consolidated Mut. Ins. Co.*, 59 Cal.App.3d 26, 40-42 (1976); *Pacific Indem. Co. v. Transport Indem. Co.*, 81 Cal.App.3d 649, 656-657 (1978).
[32] *Phelps v. Allstate Ins. Co.*, 106 Cal.App.3d 752, 758-759 (1980); *Lovy v. State Farm Ins. Co.*, 117 Cal.App.3d 834, 845 (1981) and *Mercury Casualty Co. v. Chu*, 229 Cal.App.4th 1432, 1455 (2014)
[33] See e.g., *Span, Inc. v. Associated Int'l Ins. Co.*, 227 Cal. App.3d 463, 483-484 (1991).
[34] *Amato v. Mercury Casualty Co.,* 53 Cal.App.4th 825, 833 (1997).
[35] *Pruyn v. Agricultural Ins. Co*., 36 Cal.App.4th 500, 515 (1995) citing *Samson v. Transamerica Ins. Co.* 30 Cal.3d 220, 240-242 (1981) and *Zander v. Texaco, Inc.* 259 Cal. App.2d 793, 802 (1968)
[36] *Samson v. Transamerica Insurance Co.,* 30 Cal.3d 220 (1981).
[37] *Samson v. Transamerica Insurance Co.,* 30 Cal.3d 220, 240 (1981).
[38] *Samson v. Transamerica Insurance Co.,* 30 Cal.3d 220, 240-241 (1981) (internal citations omitted).
[39] *Samson v. Transamerica Insurance Co.,* 30 Cal.3d 220, 240-241 (1981) (internal citations omitted) citing *Critz v. Farmers Ins. Group* (1964) 230 Cal.App.2d 788, 801.
[40] *Samson v. Transamerica Insurance Co.,* 30 Cal.3d 220, 241 (1981) (internal citations omitted) citing *Critz v. Farmers Ins. Group* (1964) 230 Cal.App.2d 788, 801._
[41] *Samson v. Transamerica Insurance Co.,* 30 Cal.3d 220, 242 (1981).
[42] *Moradi-Shalal v. Fireman's Fund Ins. Co.*, 46 Cal.3d 287 (1988).
[43] *State Farm Mut. Auto. Ins. Co. v. Superior Court*, 211 Cal.App.3d 5, 12 (1989).
[44] *State Farm Mut. Auto. Ins. Co. v. Superior Court*, 211 Cal.App.3d 5, 15 (1989).
[45] *California State Automobile Association Inter-Insurance Bureau v. Superior Court,* 50 Cal.3d 658, 664-665 (1990).
[46] *McLaughlin v. National Union Fire Ins. Co.*, 23 Cal.App.4th 1132, 1154 (1994).