

PLUS

How the West was Won

Lea-Ann Tratten

Holding the Carrier's Feet to the Fire in
Uninsured Motorist Claims

Tom Paoli

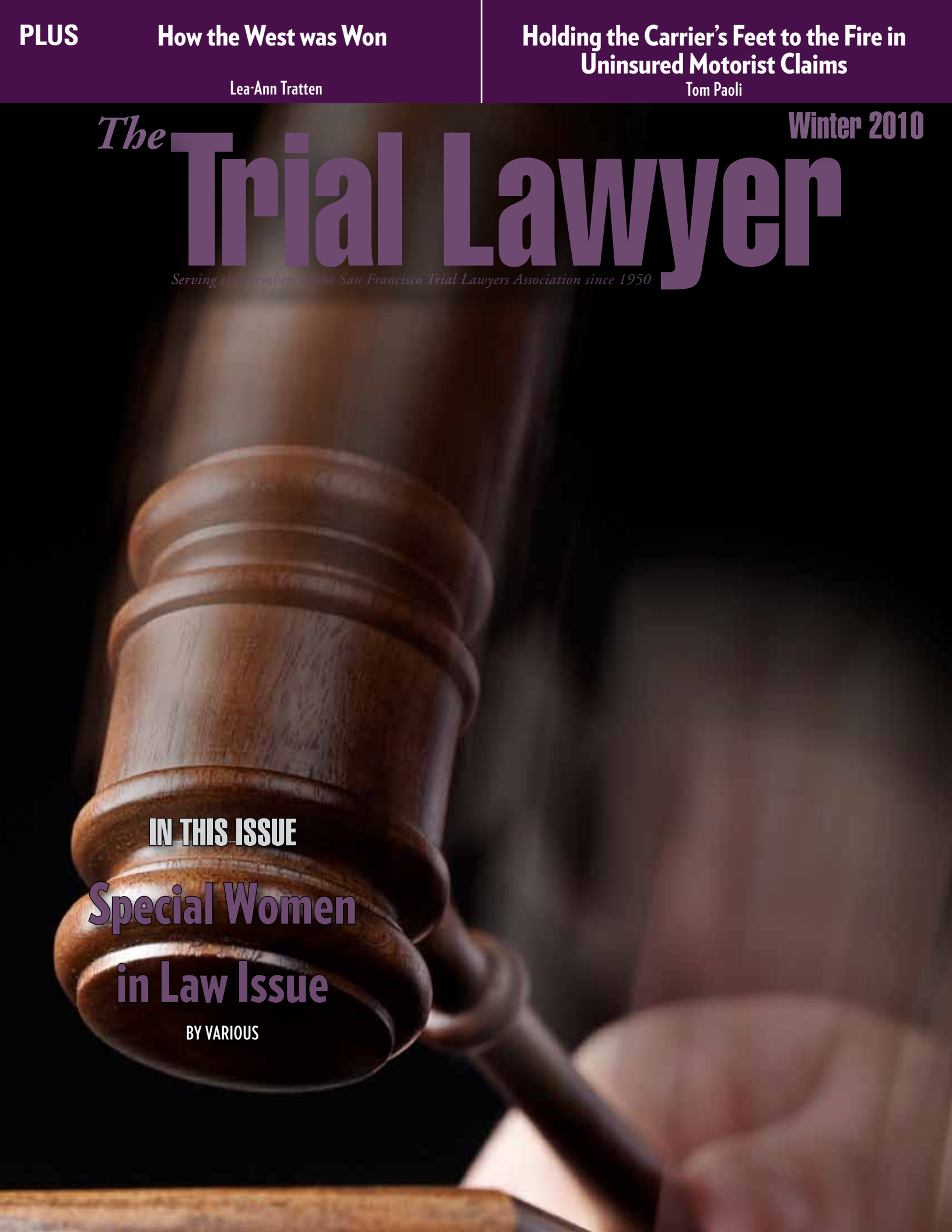
The **Trial Lawyer** Winter 2010

Serving the members of the San Francisco Trial Lawyers Association since 1950

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BY VARIOUS





Tom Paoli, is a partner in Paoli & Geerhart LLP, and specializes in the litigation and trial of major personal injury and wrongful death cases. He received law degree from the University of San Francisco in 1982.

Holding the Carrier's Feet to the Fire in Uninsured Motorist Claims

In my experience, most insurance carriers treat first party uninsured and underinsured motorist claims (UM claims) exactly as they do third party claims: slowly and with a bad attitude. They misbehave in this way even though the law requires them to process UM claims with “good faith and fair dealing.” A key to successful resolution of UM claims is to assert persistent and frequent pressure on the insurer to “make a determination of the claim.”

Insurance Code section 790.034 requires insurers to provide notice to all

“provide written notice of the need for additional time ... and specify any additional information the insurer requires in offer to make a determination.”

You should insist on the insurer's basis for its determination of the claim, i.e., value. If you demand \$100,000, and the insurer offers \$50,000, it has denied the claim in part. Demand the factual and legal basis under Section 2695.7 for this partial denial of the claim

If the insurer does not make a determination/offer, ask them what other information it needs, and get it to the insurer

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claimants the applicability of, and upon request provide copies of the Fair Claims Settlement Practices Regulations in sections 2695.5, 2695.7, 2695.8, and 2695.9 of subchapter 7.5 of Chapter 5 of Title 10 of the Code of California Regulations.

Section 2695.7¹ requires insurers to:

“immediately, but in no event more than forty (40) calendar days” after receiving proof of claim, “accept or deny the claim, in whole or part.” (1.(b))

“provide the claimant a statement listing all bases for such rejection or denial and the factual and legal bases for each reason given for such rejection or denial which is then within the insurer's knowledge.” (1.(b) (1).)

Every 30 days, “until a determination is made or notice of legal action² is served ...”

as soon as you can. This puts the ball in the insurer's court to then make a determination, and requires it to “provide the claimant a statement listing all bases for such rejection or denial and the factual and legal bases for each reason given for such rejection or denial which is then within the insurer's knowledge.” [Section 2695.7 at 1.(b) (1)]

If an insurer makes a determination/offer to settle the claim that is not acceptable, demand that it pay that amount to its insured and agree to arbitrate the balance. Some insurers will comply.

Pressure to promptly determine the claim is essential to a successful outcome of the UM claim, and may (in my practice, almost always) lead to a subsequent claim for bad faith. It has been my experience that insurers are *incapable* of following the rules and regulations governing first-party claims. Most commonly, the insurer delays resolution and fails to “make a good faith effort to obtain a prompt, fair and equitable settlement of their insureds' claims.”

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(See *Wilson v. 21st Century Ins. Co.*, (2007) 42 Cal.4th 713, 723-724; *Brehm IV v. 21st Century Ins. Co.* (2008) 166 Cal.App.4th 1225.)

Persistent reminders to the insurer of its affirmative obligations under the Regulations to promptly determine the claim or explain the reasons it has not, highlights the insurer's bad faith as it drags its feet and treats its insured as it would a third party. Delay can be the same as denial of the claim, and the insurer's failure to provide the details of the bases for its denials is a violation of the Regulations and bad faith. ■

END NOTES

1 Section 2695.7 contains *many* other helpful requirements which every lawyer handling a UM claim should read and remember.

2 "Notice of legal action" is defined in the Regulations, section 2695.2 (o) as including "any arbitration proceeding."

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to comply with the insurance code and regulations, or pay the consequences. Since the carriers typically ignore the regulations, Tom's thesis (based on his experience) is that the typical UM/UIM carrier is setting itself up for a subsequent bad faith action in virtually every claim.

Finally, Rebecca Paul highlights two more amazing verdicts by SFTLA members. Conal Doyle has been to the U.S. Supreme Court and in state court in an egregious civil rights case involving denial of medical attention. He recently obtained a major verdict in state court, with more rounds to follow. And Eustace de Saint Phalle, George W. Ellard, and Chantel Fitting went to San Mateo County and earned a \$690,000 verdict in a no offer case, proving once again that Redwood City juries can be just fine in the right case, and that some insurance carriers really mis-evaluate our cases.

In closing, here's to strong women in the law—may they continue to flourish. ■

Apartment for rent in
PARIS

Relive the experience of "Amélie" in exciting Monmartre area. Enjoy the real Parisian life in this beautiful 2BR/bath apt in a 1929 building, 15 minutes to Sacré-Coeur and Place du Tertre. It is located in a very quiet and safe residential street, close to shops, markets, banks, post-office, cafés, fine restaurants with easy access to public transportation (2 metro stations: Lamarck-Caulaincourt and Guy Moquet + buses to Opera, Louvre, Latin Quarter and Etoile).

The apt is about 750 square feet, on the 6th floor (w/elevator), sleeps 4 +, fully furnished with beautiful antiques and artworks, washing machine, cable TV (CNN, BNC, etc....). WiFi Internet, unlimited free phone calls to USA and more.

Truly a home away from home!

1200/week (use of 1BR) – 1400/week (use of both BRs). Special rates monthly or long term.

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