



California Attorneys for the  
**Insurance and Financial Services Industries**

12657 Alcosta Boulevard, Suite 150 ♦ San Ramon, California 94583-4698  
Voice: (925) 973-0300 ♦ Fax: (925) 973-0330 ♦ [www.califehealth.com](http://www.califehealth.com)

## **California Appellate Court Refuses to Order Insurer to Identify Other Psychiatric DI Claimants Whose Claims Were Denied**

By: Robert R. Pohls

In *Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, the California Supreme Court held that plaintiffs in bad faith actions are entitled to discover the names and addresses of other claimants whose accident claims were denied. In reaching that result, the Court noted that California's version of the Unfair Claims Settlement Practices Act prohibits insurers from "knowingly committing or performing with such frequency as to indicate a general business practice" a variety of "unfair claim settlement practices." The Court therefore reasoned that plaintiffs in bad faith actions should be permitted to contact other persons whose claims were denied, but only for the limited purpose of seeking permission to review their claim files for evidence of a prohibited "general business practice."

Depending upon the level of detail by which the insurer keeps a record of its historical claims, efforts to comply with requests for *Colonial Life*-style discovery can be especially burdensome. Even when the list of similar claimants can readily be assembled, a request for *Colonial Life*-style discovery virtually ensures that the plaintiff's lawyer will communicate with each claimant identified by the insurer. For obvious reasons, communications from a bad faith plaintiff's attorney can undermine the insurer's good will. They also can prompt other claimants to file their own lawsuits. For nearly twenty years, then, insurers have struggled to find an effective means of thwarting this type of discovery.

The recent decision in *Pollock v. Superior Court* (Nov. 6, 2001) offers some hope for responding to *Colonial Life*-style discovery concerning psychiatric disability claims. In that case, California's Second District Court of Appeal reasoned that disclosing the identity of other claimants whose psychiatric disability claims had been denied necessarily discloses those other claimants' psychiatric condition. The Court therefore held that the psychotherapist-patient privilege forbids the insurer from responding to *Colonial Life*-style discovery concerning psychiatric disability claims.

The insurer appears to have achieved that outcome by offering a psychiatrist's declaration to suggest that such discovery presents a danger to the claimant, "even if the insurance company were to do nothing more than advise the claimant that it has been asked to seek his permission to reveal his name to others." In that declaration, the psychiatrist offered that such a communication could aggravate the claimants' problems, worsen their condition, and possibly revive their disability claims. Nevertheless, the majority opinion in *Pollock* speculates that there may be alternative methods by which the insurer can respond to *Colonial Life*-style discovery, while still preserving the confidentiality of other claimants' psychiatric conditions. The Court's opinion therefore leaves open the possibility of a different result in other cases.