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September 2018

## Going and Coming Rule

*Credit to Tyson & Mendes, La Jolla, CA*

The “going and coming” rule holds an employer is generally not responsible for torts committed by an employee going to or coming from work. There are two primary exceptions to the going and coming rule: 1) If the employee is explicitly or implicitly required to drive to and from the workplace so the vehicle is available for the employer’s business; and 2) If the use of the employee’s vehicle provides some direct or incidental benefit to the employer. The Second District Court of Appeal recently turned up the heat on plaintiffs who try to fit their facts into the two main exceptions to the going and coming rule. Under the going and coming rule, the employment relationship is “suspended” during an employee’s commute to and from work. However, the “benefit to the employer” exception applies, if the employee has agreed to make the vehicle available as an accommodation to the employer, the employer has reasonably come to rely on the vehicle’s use, and the employer expects the employee to make the vehicle available regularly. Again, the employee’s agreement may be either express or implied.

### Newland v. County of Los Angeles

In *Newland v. County of Los Angeles* (2018) 234 Cal.Rptr.3d 374, the court considered the public policy concern of holding employers liable for torts committed by their employees in the course and scope of doing business. Just as the employer profits from the enterprise which may cause harm to others, it also must absorb the costs of torts committed by employees rather than spread those costs to an injured plaintiff. The reason for this policy is the employer is better able to absorb the costs of its employee’s torts.

In *Newland*, public defender defendant Prigo (“Prigo”) was driving home from work and decided to stop at the post office. As Prigo was turning into the post office, he hit a car driven by defendant Kevin Vargas (“Vargas”), who was forced off the road, injuring plaintiff-pedestrian Jake Newland (“Newland”).

As part of his job, Prigo traveled to various court branches to attend hearings, meet with his clients in various jails, visit the coroner’s office and crime scenes, and occasionally to meet with offenders’ families to gather mitigation evidence. During his long career, Prigo would sometimes use public transportation. On the days he needed to leave the office for work-related duties, Prigo would drive his car to work. There was never a work-related emergency that caused Prigo to use his car in a way that was incidental to his employment. Instead, every job-related occasion requiring him to leave the office was pre-scheduled.

It certainly sounds like Prigo used his car for work from time-to-time, but the *Newland* Court held unless Prigo was implicitly or explicitly required to have his car available for work *that day* or his employer benefitted from the availability of Prigo’s car *that day*, the going and coming rule applies.

“In order for Prigo’s commute to come within the course and scope of his employment, the County must have required him to drive his car or otherwise benefitted from Prigo having his car available for work purposes *that day*. There is no evidence that Prigo was commuting in his car at the time of the injury because the County required him to have his car available, or that his commute provided any

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## President's Message

This is my last monthly message to you as the 2017-2018 CAIIA President. The volunteers that keep this organization in existence are invaluable and I could not have done this job without them. They are the people that do the work in the background without recognition, by calling me and sending emails or just doing what needs to get scheduled and done. Thank you for being there and for knowing you will be a participant in the future.



**Paul Camacho**  
CAIIA President

John Ratto of Reliant Claims will be taking over the leadership and he is qualified and ready to go. I hope that you have registered and will join us on September 21, 2018 in Berkeley for our CAIIA Annual meeting. **Just in case you need it, here is the link.** <https://www.caiaa.com/wp-content/uploads/2018/08/CAIIA-Fall-2018-Convention-Registration-Fillable.pdf>

I am constantly on the learning curve, especially as we have modified our Bylaws to help this organization grow. We need to grow our organization and that means taking the time to volunteer or join if you qualify and are not a member. The greatest experience I have is meeting my peers and sharing the knowledge of claims handling. There is no dispute that no two claims are the same and that claims do not discriminate. No book can train you in on the job experience.

The value of proper claims handling is that you are helping someone in an uncomfortable situation. Most people only know they pay their premiums and do not know what to expect when they have to file a claim. It is our job to guide the process for the insured so that they have the full benefit of their coverage. I use the term navigate because you never know if the claim assignment will be straight forward or there is a twist due to new laws, regulations, locations or personalities.

Each month I am asking a past CAIIA President to share their observations of this organization and their views of change. Thank you to all the past presidents for taking the time to share your thoughts and experiences.

This month I have asked Pete Vaughan, who was the CAIIA president in 2008-2009, to write this month's President's message. Pete has been active and volunteered to join the Board again as a director and was instrumental in working with Kevin Hansen our outgoing "Of Counsel" in revising our Bylaws. Pete, like many of our members, is now retiring and we wish him all the best as he does not have to worry about reports, time lines, regulations, phone calls, emails. (you know the storyline)

Thank you to taking the time to read our Status Report and being a part of the CAIIA network.

Best regards,

**Paul R. Camacho, ARM, RPA**  
**CAIIA President 2017-2018**  
**Mission Adjusters**



## NEWS FROM AND FOR OUR MEMBERS

### SAVE THE DATE

The CAIIA is proud to be exhibiting at or sponsoring the following upcoming events:

**August 28-30**

**Claims Conference of Northern Ca., Squaw Valley**

**September 21**

**CAIIA Annual Meeting, Berkeley, CA**

#### Peter Schifrin Shines for the CAIIA

Past President Peter Schifrin of SGD, Inc. was recognized by Insurance Commissioner Dave Jones for his outstanding contribution to the Curriculum Committee of the Department of Insurance. Peter has represented the CAIIA on the Committee for the last several years. Richard Kern of SGD, Inc. is taking over Peter's position on the Committee. You can be rest assured that the CAIIA will be well represented on the Committee in the future.



Well I've done it, I have retired. As of Tuesday, August 21, I completed the last bit of business on the last open file, closed and billed it. I turned to the stack of work that I normally maintain and found nothing in it.

Lest you think retirement is all wine and roses, let me point out that it's been hard work breaking down my office and getting it ready to turn back over to the landlord. Yesterday we filled one and a half dumpsters. What has been a valuable productive adjusting office has now become landfill.

On the other hand, the obvious benefit of retirement is free time. When working part-time, I have spent twice as much time on my boat as I have in recent years. I've spent a good deal of time with my granddaughter. I have not spent time with frantic desperate people trying to assure them that they will recover their loss under the terms and conditions of the policy. I have not missed this so far. I suppose 43 years of continuous adjusting may have reduced the novelty of that type of interaction.

As I leave the profession and this organization I would like to know that they will both continue to grow and prosper. In that regard, the organization would benefit from an infusion of new blood. During our midterm meeting, some thoughtful members, particularly Kim Hickey, proposed that we expand the ranks of our members by changing the definition of qualifying groups. We would maintain the emphasis on adjusting by retaining the requirement that only license holders may join.

This proposal turns on the historic fact that there are many independent adjuster license holders who currently do not qualify for membership. Some work for insurers, risk management pools or other non-independent adjuster entities. Others work for independent adjusting firms that have not chosen to join as a firm. Still others are not active in the profession. None of these license holders qualify for membership under our current bylaws. It was proposed that we amend the bylaws and give those license holders the opportunity to join our ranks. We have some experience that suggests there is a latent interest in the association among these groups.

A committee was formed to put together and recommend these bylaws changes. After this author proposed language that was not clear enough, Kevin Hanson, our of counsel, volunteered to apply his considerable language and legal skills to composing bylaw revisions that would conform with our instructions. Over the last six months the committee has been working with Kevin, and the resultant document has now been distributed to the membership for review. The vote on the bylaw changes will happen during the upcoming membership meeting. We would appreciate your thoughtful attention to the discussion and then vote on these changes.

In the event that the membership votes in support of the proposed bylaw changes, this by itself will not be enough to increase the number of our members. We will still need to make current license holders aware of their new opportunity. The plan is to compose a letter highlighting the attractions and benefits of membership as well as the availability of membership. This letter should be distributed to all current adjusting license holders. I will not be available to assist with this duty. If you paid attention to paragraphs one through four above, you'll realize that I have made other arrangements. I encourage each of you to consider the possibility of assisting with this effort. It would be a fine way to show your commitment to the association and its continued health. Meanwhile I shall be planning a cruise through Europe, or a trip to Hawaii while you continue to deal with our hordes of fire victims and such. Best of luck to you.



Pete Vaughan, Past President

**Pete Vaughan**

Continued from page 1

other benefit to the County *that day*. The evidence is insufficient to support the judgment.” (*Newland v. County of Los Angeles* (2018) 234 Cal.Rptr.3d 374, 381-382, emphasis added.)

#### The “Requirement” Requirement

The court’s decision in *Huntsinger v. Glass Containers Corp.* (1972) 22 Cal.App.3d 803, provides contrast for the rationale of the court’s decision in *Newland*. In *Huntsinger*, the court ruled the benefit exception to the going and coming rule applied. In that case, the employee-defendant was required to bring a car to work every day to have it *available* for work purposes. The employee-defendant in *Huntsinger* was required to drive his car to work and routinely left the office to visit customer sites. On the day of the incident, the *Huntsinger* defendant-employee drove to his office, then to a customer’s plant, and back to the office. At the end of the day, he left the office and in the process of driving home, hit and killed a motorcyclist. The *Huntsinger* defendant-employee was on his way home, **but he was driving his car because his employer required him to make it available and his employer was benefited by the availability of the vehicle** as the defendant-employee could immediately leave work to address customer concerns.

[...] when a business enterprise requires an employee to drive to and from its office in order to have his vehicle available for company business during the day, accidents on the way to or from the office are statistically certain to occur eventually, and, the business enterprise having required the driving to and from work, the risk of such accidents are risks incident to the business enterprise.” (*Huntsinger v. Glass Containers Corp.* (1972) 22 Cal.App.3d 803, 810.)

#### Murky Waters

What about the grey areas- where a defendant-employee does a few errands here and there for her employer, or what about a situation where a defendant-employee is required to bring her car to work every day but rarely uses it for purposes incidental to her employment? These questions were addressed by the courts in *Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707, and *Lobo v. Tamco* (2010) 182 Cal.App.4th 297, respectively.

#### The *Ducey* Scenario

In *Ducey v. Argo Sales Co.*, employee-defendant was cleaning model homes. She drove from her home to the model homes and back. On her way home from cleaning a model home, she was involved in an accident. There was evidence she occasionally used her vehicle to run work-related errands. At the time of the accident, the defendant-employee was driving home and not in the process of running a work-related errand.

The Supreme Court found the **evidence was not sufficient to establish the employee-defendant**, as a condition of her employment, **was required to commute in her personal car**. Therefore, neither of the exceptions to the going and coming rule applied.

#### Conclusion

The exceptions to the going and coming rule are nuanced. *Newland* helps us navigate and understand the nuances by firming up the doctrine behind the exceptions to the going and coming rule. Simply put, an implicit or explicit requirement of an employer that an employee make her vehicle available every day, even if she rarely uses it for tasks incidental to her employment, is strong evidence in favor of the extension of vicarious liability. Conversely, an employee may use her vehicle for work incidental to her employment *sometimes*, but in order to extend vicarious liability, plaintiff has the burden of proving the employee-defendant was required to make her vehicle available *every day* or even *that day*.



**Hard to believe-  
Summer is nearing an  
end and it's time for  
the kids to go Back to  
School.**

**Press Release from the DOI****Former agents sentenced to a combined 10 years in life insurance scheme***Ordered to pay over \$150,000 in restitution to insurance*

**LOS ANGELES, Calif.** - Former insurance agents Ali Kakande, 38, and Sulaiman Lutale, 36, pleaded no contest to multiple felony counts of insurance fraud, grand theft, and forgery after falsifying life insurance applications to collect over \$150,000 in unearned commissions. Kakande was sentenced to six years in state prison and ordered to pay \$105,129.90 in restitution. Lutale was sentenced to four years in state prison and ordered to pay \$45,680.36 in restitution.

"To those contemplating insurance fraud, let this be an example that this crime is a felony," said Insurance Commissioner Dave Jones. "This is a significant conviction and sentence on an insurance fraud case and it sends an important message to those who commit fraud-we will find you and you will be prosecuted. We are committed to working with our law enforcement partners to bring justice to those who rip off insurers and consumers for their own financial gain."

Kakande and Lutale were arrested in April 2017 after an investigation by the California Department of Insurance and U.S. Immigration and Customs Enforcement's (ICE), Homeland Security Investigations (HSI) revealed Kakande and Lutale submitted over 200 fraudulent life insurance policy applications to various life insurance carriers to collect over \$150,000 in unearned commissions.

The investigation found Kakande and Lutale conducted this advanced commission scheme by illegally using licenses from other licensees and obtaining personal information for the fraudulent applications by recruiting applicants with money and promises of free life insurance policies. They also stole identifying information and on some policies had themselves as the purported policyholders.

"Insurance fraud schemes disrupt the economy and cause law abiding citizens to pay more for their coverage," said Joseph Macias, Special Agent in Charge for HSI Los Angeles. "HSI is committed to working with our law enforcement partners to bring down organized criminals that enrich themselves through fraud - with no concern for the law or their affected victims."

The applications submitted to the insurance carriers contained misrepresentations and fabricated information, including false occupations, income, net worth or beneficiary information. Some of the applications also contained forged signatures of the alleged applicants. Generally, premium payments were not paid by the applicants, but instead paid from accounts owned by Kakande or Lutale, or from accounts opened by other individuals who assisted them in carrying out the scheme.

"Insurance fraud is a serious offense that drives up insurance costs for all of us," Los Angeles County District Attorney Jackie Lacey said. "These convictions represent my office's continuing effort to aggressively protect consumers and businesses from all types of fraudulent activity."

The Los Angeles County District Attorney's Office prosecuted the case under the California Department of Insurance's Life and Annuity Consumer Protection Program.

For fillable form click [here](#)

**CAIIA REGISTRATION FORM**  
**California Association of Independent Insurance Adjusters**  
**ANNUAL CONVENTION—September 20-21, 2018**



[DoubleTree at Berkeley Marina, 200 Marina Blvd., Berkeley, CA 94710](#)

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<b>Spouse/Guest fee</b> <i>Name</i> _____ (Reception, Continental breakfast, & Gala Dinner)	\$ 100.00	# _____	\$ _____
<b>Non-Member Convention Package</b> (Includes Dinner, Continental Breakfast, CE Class, & Lunch)	\$ 175.00	# _____	\$ _____
<b>3 Hour CE Class Only</b> (Adjusting Fine Arts, Digital Forensics, Investigation of Product Liability Failures in Commercial Properties) (Includes Continental Breakfast, CE Class(es), & Lunch)	\$ 100.00	# _____	\$ _____
<b>President's Gala Dinner Only</b>	\$ 75.00	# _____	\$ _____
<i>Grand Total payable</i>			\$ _____

**SCHEDULED EVENTS**

Please specify which events you will attend by placing a check mark in the box next to the event.

Complete a separate form for each registrant and additional guest

You      Spouse/Guest

John Ratto

09/20 – 6:30 P.M.	Welcome Reception	[ ]	[ ]	Reliant Claim Service, Inc.
09/21 -- 8:00 A.M.	Registration/Breakfast	[ ]		PO Box 11200
09/21 – 9:00 A.M.	Seminar (3 CE credits-Misc)	[ ]		Oakland, CA 94611
09/21 – 12:00 P.M.	Lunch	[ ]		
09/21 – 1:00 P.M.	Business Meeting (*)	[ ]		
09/21 -- 7:00 P.M.	Dinner at Trader Vic's in Emeryville	[ ]	[ ]	

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## On The Lighter Side...

Back in 2005, the local Chevron gas station in Seattle's Wallingford neighborhood converted their auto repair shop into a convenience store. Their outdoor sign—once used for service promotions and store specials—became redundant with the inside of the store already plastered with signage. So the owners decided to have fun with the outdoor sign instead, and the [@WallingfordSign](#) was born. This weekly sign message has become so popular, it has become a more effective marketing tool for the gas station than anything prior.

