

## Injuries Were Not Caused By School District's Ownership and Maintenance

**Credit to : Low, Ball & Lynch, San Francisco, CA**

**Brian M. Grossman v. Santa Monica-Malibu Unified School District**  
**Court of Appeal, Second Appellate District (March 25, 2019)**

Plaintiff Brian Grossman suffered injuries after falling off an inflatable slide at an annual carnival fundraiser held at a school in the Santa Monica-Malibu Unified School District (the school district). The carnival was organized by the booster group and parent-teacher association (PTA) which are separate from the school district. The school district approved the use of the school for the carnival and permitted promotions of the carnival at the school. The school district did not charge for the use of the school. No written materials or oral instructions relating to safety precautions were provided by the school district. The school district did not plan, set up operate, or supervise the carnival or inspect the rides. The booster group hired WOW Party Rental, Inc. (WOW Rental) to rent and set up the inflatable slide and also James Event Productions, Inc. (James Event) to provide the other attractions and the generator for the slide. Plaintiff filed suit for negligence, alleging he fell because the inflatable slide was not tethered to the ground.

The trial court granted the school district's summary judgment motion and concluded, "[W]ith no facts showing how [the school district] was negligent with respect to its ownership or maintenance of the school facilities or grounds, [Grossman] cannot meet his burden of proof to show [the school district] breached any duty towards him." The trial court also ruled that plaintiff raised a triable issue of fact as to whether the school district was estopped from arguing Grossman submitted his claim to the wrong person. The Court of Appeal affirmed the judgment and dismissed the school district's cross-appeal as moot. The Court of Appeal held that the Education Code allocates liability between school districts and entities allowed to use the school district grounds, including the booster group that planned and held the carnival fundraiser. Education Code section 38134, subdivision (i) (1) provides "A school district authorizing the use of school facilities or grounds under subdivision (a) is liable for an injury resulting from the negligence of the school district in the ownership and maintenance of the school facilities or grounds. An entity using the school facilities or grounds under this section is liable for an injury resulting from the negligence of that entity during the use of the school facilities or grounds...."

The Court explained that there is no evidence plaintiff's injuries resulted from the school district's "ownership and maintenance of the school facilities or grounds," but rather his injuries arose from the alleged negligence of the booster group and others by not tethering the slide to the ground "during the use" of the school grounds. In addition, Education Code section 38134, subd.(i)(2) clarifies that that the Education Code does not alter Government Code section 835 which limits a public entity's liability to "an injury caused by a dangerous condition of public property." The court stated that as a matter of law the inflatable slide was not a dangerous condition of public property within the meaning of Government Code section 835.

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**President's Message**

This month I'd like to do a little send off for one of our most esteemed members who is retiring after 40 years in the insurance industry and over 37 years as an independent adjuster.

Our longtime Executive Director and past president (2001-2002) Sterrett Harper is resigning as the Association's executive director and closing shop on Harper Claims Service Inc. which he opened on June 15, 1993. Sterrett recently recalled how nervous he was the first day he opened for business, unsure he would receive any claims. The very next day he received an assignment of a complex truck accident which took 18 months to adjust. Not a bad start to a 26 year business!

Sterrett was originally born in Oakland and grew up and attended elementary and high school in Pleasant Hill, California. He graduated from UC Davis in 1975 and received a teaching credential a year later.

Unfortunately, Sterrett found permanent teaching positions were scarce in those days and he noted the job was actually "boring" to him. Subsequently he secured more interesting work with a local police department, as a dispatcher, bike and meter patrol, and other odd jobs. Eventually, Sterrett was invited to join the police force to become an officer and while that job certainly seemed interesting, he ultimately declined the position because he did not want to carry a gun. However, Sterrett remained fascinated with the investigation aspects of police work and one day when an adjuster from GAB walked into the police department where Sterrett was working the front desk, a new career path was revealed. After hearing what an adjuster did for a living, Sterrett was sold! He started as an adjuster trainee with Kemper in 1979 and within 2 ½ years was promoted to supervisor (faster than anyone in the history of the company). Subsequently he was approached by the independent adjusting firm of DL Glaze company which not only offered him the same pay with the potential to make more, but they also provided a company car. How could he pass up that offer....!

After approximately five years with DL Glaze, Sterrett moved to Southern California to help expand that company's footprint. He became regional manager of DL Glaze in 1987. After seeing a downturn in the market and realizing that he might like to take on the challenge of operating his own firm, Sterrett started Harper Claims Service Inc. on June 15, 1993. One year later, Sterrett became a member of the CAIIA where his enthusiasm and skills have long been appreciated. Sterrett has been a powerful force behind the monthly Status report where his research skills and legal knowledge have provided members with a steady resource for current legal issues affecting the insurance industry. Sterrett's expertise with Roberts Rules of Order has kept many a meeting on track and his positive energy has kept the Association moving and evolving through the years.

Sterrett, as you move forward into the retired life, remember the legacy of achievement you left behind! You have encouraged us all to work harder and be proud of our organization. Thank you for your many years of effort and inspiration. You will be missed and long remembered.

The Association had an excellent midterm meeting on April 5 and stay tuned for details of our annual Fall event which will be held in Southern California.

**John Ratto President**

CAIIA President



**John Ratto**  
CAIIA President



## NEWS OF AND FOR OUR MEMBERS

## SAVE THE DATE

The CAIIA is proud to be exhibiting at or sponsoring the following upcoming event:  
**August 27-29,2019 Claims Conference of Northern California, Lake Tahoe, CA**

### MESSAGE FROM EDITOR & CAIIA EXECUTIVE DIRECTOR- Sterrett Harper

Dear CAIIA Member,

Change for some is difficult, while for others it is easy. Knowing this, change is everywhere and change is afoot with me. I have gone back and forth over retirement and, after over 40 years as an adjuster, I am now making the big change and going into retirement. This includes resigning as Executive Director of the CAIIA and Editor of the Status Report.

Effective May 5, 2019, I will no longer be as involved with the CAIIA as much as I have been since 1987. If I were to say that this has been an easy decision, I would be lying. Even though I have been assured that I will always be welcome, I certainly will miss all of the day to day interaction with all of the people at the CAIIA. I will be keeping my cell phone number and email address. This is the way that most of you have contacted me. If anyone wants to contact me, don't hesitate to do so. The association phone number and addresses are changing. Elsewhere in the Status report you find the new information.

I wish each and every member and the Association the very best. Please note that longtime member, SGD, Inc., has agreed to be the new address of the Executive Office of the CAIIA. They have also provided the Association with a new telephone # at no cost to the CAIIA. The new information is on the website and below. Please update your records.

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I am also pleased to announce that Kim Hickey will be the new CAIIA Executive Director. She can be reached at the above #/ address. I wish her the best and am always available to her for any counsel I may provide.

Thank you,  
 Sterrett Harper, Soon-to-be-Retired Executive Director, CAIIA

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### THANK YOU LETTER FROM CAL STATE FULLERTON

The CAIIA recently made a donation to the Cal State Fullerton Insurance Studies Scholarship fund and we received this appreciative thank you note from them:



## DOI Announcement



**RICARDO LARA**  
CALIFORNIA INSURANCE COMMISSIONER

### NOTICE

**TO:** All Insurers, Agents and Brokers, Adjusters, Bail Agents, and Other Interested Parties

**FROM:** Licensing Services Division

**DATE:** April 23, 2019

**SUBJECT:**

- CDI is Moving to Sircon's Enhanced Online Services
- CDI's new Check License Application Status Service (CLASS)

We are pleased to inform you that the California Department of Insurance (CDI) will be moving its online licensing services for insurers, agents and brokers, adjusters, and bail agents to Sircon, powered by Vertalora, in the Summer of 2019 to take advantage of Sircon's enhanced online licensing services. At that time, the following CDI online licensing services for individual and business entity license applicants and licensees will no longer be available:

- Fast License Application Service is Here (FLASH)
- Fast License Renewal Service (FLRS)
- Business Entity Application (BES)
- Endorsement and Termination Services (BES)
- Education Provider Online Programs (EPOP)

When Sircon's enhanced online services are implemented, individual and business entity applicants will be able to submit their license applications, renewals, address changes, endorsements, and terminations electronically. Additionally, Sircon's enhanced online services will also include the following:

- Improved license status records – Automatic real-time application license updates and complete continuing education records.
- Ability to submit background statements online – Individuals and business entities will have the ability to attach background statements to their license applications and renewals when the license application is submitted, or as long as the application is pending review by CDI.
- Improved license renewal notifications – Licensees will receive a 90-day license renewal notification, an ethics continuing education (CE) requirement notification before license renewal, a CE noncompliance notification, and/or a license inactivation/reinstatement notification as applicable.
- Enhanced business entity endorsement and termination services – Business entities will be able to endorse (i.e., affiliate, associate) a list of agents and/or terminate multiple agents by selecting from the entity's list of endorsed agents.

CALIFORNIA DEPARTMENT OF INSURANCE  
PROTECT • PREVENT • PRESERVE  
Licensing Services Division  
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Notice: CDI Moving to Sircon's Enhanced Online Services  
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- Monthly invoices – Insurers and business entities who subscribe to Sircon will receive an invoice, payable by check or credit card, of all transactions performed on Sircon.
- Online Payment using all credit cards or e-checks – Individuals who submit license applications and renewals through Sircon will pay via credit card or e-check at the time of their transaction.
- License reinstatements will replace the late license renewal process – Licensees who did not pay their license renewal fees or complete the required continuing education will receive a license reinstatement notification after its expiration date. Licensees who need to complete continuing education to reinstate their licenses will not need to contact CDI as the courses will automatically apply to their record. The reinstatement penalty renewal fees will be payable electronically.

There will be no service fees for the submission of license applications online. Appointment and appointment termination service fees will remain the same. However, there will be fees for the following services:

- \$3.50 – Endorsements and endorsement terminations
- \$5.00 – Online license renewals
- \$6.00 – Letters of certification

When the Sircon online services are implemented, CDI will also launch its new Check License Application Status Service (CLASS). CLASS will enable individual and business entity license applicants to review the list of required documents, the documents CDI has received, and the required documents still pending; access applications; and append/attach required documents to applications. In addition, CLASS will provide information on how to submit fingerprints, how to complete prelicensing education requirements, and how to contact an education provider for assistance. For business entities, CLASS will also list any pending business-related items and provide steps to submit required business documents. Furthermore, when individual and business entity licenses are issued, CLASS will provide the new licensees with links to CDI's "Check License Status" and "Print or Download Your License" services.

Current Sircon subscribers will automatically have access to the services for California. Once CDI transitions to Sircon's enhanced online services, insurers, business entities, and individuals currently using CDI's online services will need to subscribe to Sircon to continue to take advantage of their online services. However, individuals and business entities may still submit paper license renewals and paper endorsements and terminations to CDI.

To create a Sircon account, sign-up at the following:

- Individuals – [www.sircon.com/individuals](http://www.sircon.com/individuals)
- Business entities – [www.sircon.com/agencies](http://www.sircon.com/agencies)

In addition, insurers may contact Sircon at [www.sircon.com/carriers](http://www.sircon.com/carriers) to create an account.

Please direct questions to CDI's Producer Licensing Bureau by email at [LicDocuments@insurance.ca.gov](mailto:LicDocuments@insurance.ca.gov) or by telephone at (800) 967-9331.

## Komorsky v. Farmers Insurance Exchange Case No. B286443 Credit to McCormick Barstow, Fresno, CA

### UNDERLYING FACTS

Alan and Linda Liker were named insureds under an automobile policy issued by Farmers with UM/UIM coverage limits of \$250,000 per person. The primary Farmers policy defined "insured person" as "[y]ou or a family member" and "[a]ny person for damages that person is entitled to recover because of bodily injury to you, a family member, or another occupant of your insured car." "Family member" was defined as "a person related to you by blood, marriage or adoption who is a resident of your household." Alan Liker also had an umbrella policy with Truck with a \$1 million limit. The Truck policy included an endorsement adding UM/UIM coverage. The UM/UIM endorsement in the Truck umbrella policy provided that coverage was "payable to you and any other insured under this policy, to the extent that either or both coverages are a part of the underlying insurance." "You" was defined as the named insured (Alan Liker) and his spouse living in the same household. The term "insured" was defined as "you" and any relatives living in "your" household.

Linda Liker was killed by an uninsured motorist and Alan Liker made a claim for UM coverage under the Farmers and Truck policies and demanded arbitration. Komorsky, Linda's daughter from a prior marriage, also made a claim under both policies. She did not live in the Likers' household. Komorsky subsequently filed suit alleging causes of action for declaratory relief and negligent interference with prospective economic advantage against Truck, Farmers and Liker, and causes of action for intentional interference with prospective economic advantage and a permanent injunction against Liker. She later amended the complaint to add causes of action for breach of contract and bad faith against Farmers and Truck. In addition, Alan Liker filed a petition to compel arbitration.

The trial court decided that the arbitration should proceed only after the coverage issue was resolved. Komorsky's sister, Fogelman, intervened in the action. Farmers filed a complaint in interpleader alleging the defendants had competing claims to the UM benefits. Both Truck and Farmers conceded that Komorsky and Liker were entitled to benefits under their respective policies. Liker disputed Truck's position that Komorsky was entitled to coverage under the Truck policy. The trial court ruled that Komorsky and Fogelman were entitled to UM coverage under the Farmers policy but not the Truck policy, finding that Insurance Code section 11580.2 (a)(1) did not apply

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to the umbrella policy and that Komorsky and Fogelman were not insureds under that policy because they were not residents of the Likers' household. Komorsky later filed a motion to amend her complaint to add causes of action for estoppel and reformation, which motion was denied. In spite of Truck's prior acknowledgment of coverage, the trial court granted a motion for judgment on the pleadings filed by Farmers and Truck based on Farmers interpleader of its policy limits and the court's finding that Truck's policy did not cover Komorsky or Fogelman. Judgment was entered in favor of Farmers and Truck. Komorsky appealed.

#### APPELLATE COURT'S RULING

As explained by the appellate court, Insurance Code section 11580.2 (a)(1) requires that UM coverage provide benefits to the insured or the insured's heirs or legal representative "in the amount of damages an uninsured driver is liable to pay the insured, or the insured's heirs or legal representative ... " This section also "expressly excludes insurance policies providing only excess or umbrella coverage from this requirement." The parties agreed that under this section, Komorsky, as the heir of Linda Liker, was entitled to benefits under the Farmers policy. The dispute was related to the Truck umbrella policy. Although Komorsky acknowledged that section 11580 (a)(1) does not apply to umbrella policies, she argued that it should apply to Truck's policy because that policy included a UM/UIM endorsement. She argued that public policy requires that the umbrella policy "follow form" as to the underlying policy and comply with the requirements of 11580 (a)(1) "to avoid fracturing families in wrongful death claims." The appellate court disagreed, noting that the statutory language was unambiguous and the court could not rewrite the statute "to confirm to an assumed intention that does not appear in its language. [Citation.]" (Citation.)"

The appellate court next discussed the actual language of the Truck UMBRELLA policy to determine if coverage applied. The policy provided that benefits be paid to "you and any other insured under this policy" to the extent such coverage was provided under the underlying policy. The policy defined "you" as the named insured, his spouse and any other insured under the policy. "Insureds" included "you" and "any relatives ...living in 'your' household." The appellate court held that "[b]ecause Komorsky was not living in the Likers' household she was not an 'insured' under the Truck endorsement. Therefore, by the endorsement's plain language, uninsured motorist benefits were not 'payable to' her. (Citation.)" The appellate court also noted that the fact that the umbrella policy may have been a "following form" policy did not change the result because when the terms of such a policy conflict with the primary policy, the provisions of the excess policy apply.

Finally, the appellate court determined that the trial court correctly denied the motion to amend to add causes of action for estoppel and reformation. As to the claim that Truck was estopped from refusing coverage since it had asserted early on in the litigation that its coverage applied to Komorsky, the court found that the principle of estoppel could not be used to extend coverage where none exists. With respect to the reformation claim, the appellate court found that the proposed complaint did not allege any facts showing either a mutual or a unilateral mistake. Although the proposed complaint alleged Truck thought the policy applied to the loss as evidenced by its initial position, the appellate court noted that "it alleges no facts regarding the intention of Alan and Linda Liker (assuming arguendo that Linda Liker was a contracting party) in this regard. It does not allege the Likers intended the uninsured motorist coverage under the Truck umbrella policy to apply to Komorsky as the heir of an insured, alleges no facts showing why the endorsement does not reflect such a mutual intention, and alleges no facts showing the Likers knew of or suspected any unilateral mistake." As such, the trial acted properly in denying the motion to amend and the judgment of the trial court was affirmed.

#### EFFECTS OF THE COURT'S RULING

This opinion confirms that, under California law, the requirements of section 11580.2 (a)(1) do not apply to umbrella or excess policies and that such policies must be interpreted according to their terms. The mere fact that such a policy provides UM/UIM coverage does not mean that such coverage must be in compliance with section 11580.2 (a)(1).



**DOI PRESS RELEASE****Elderly Santa Barbara woman target of insurance fraudsters for a decade**

*Arrested pair accused of conspiracy and theft from an elder  
to support lavish lifestyle*

**SANTA BARBARA, Calif.** — Today, California Department of Insurance detectives arrested two persons for allegedly conspiring to commit financial elder abuse against an 89-year-old Santa Barbara resident. Detectives arrested insurance agent Erica Salda at her residence in Santa Barbara, and financial advisor Wendy Foster at her residence in Oxnard.

Salda, 57, and Foster, 59, allegedly targeted a long-time resident of Santa Barbara over a 10-year period. Beginning in 2005, the then 89-year-old victim had a multi-million dollar investment portfolio that she expected to provide her income for the rest of her life.

“It is repugnant that professionals in positions of great trust, like an insurance agent and financial adviser, would target and steal from a vulnerable senior,” said Insurance Commissioner Ricardo Lara. “While the vast majority of licensed agents do not commit fraud, it is important for consumers and their families to be alert for warning signs of abuse.”

Shortly after meeting the victim in 2005, Salda and Foster persuaded her to abandon the licensed professionals who had been managing her estate for years, and replace them with Foster who had no prior experience as a professional fiduciary or attorney-in-fact. Foster and Salda then persuaded the victim to liquidate her entire investment portfolio and invest \$3,000,000 in two annuity policies.

Over the next ten years, Foster and Salda allegedly conspired to unnecessarily sell an additional 23 annuities to the victim, many of which were purchased without her knowledge or consent. These sales generated insurance commissions for Salda in excess of \$1 million. During the same period of time, Foster collected fees exceeding \$400,000 for acting as the victim’s trustee.

Salda operates her business, E-Pro Insurance Agency, out of her home in Santa Barbara. During the course of their relationship with the victim, Salda and Foster failed to disclose material information to her, including the fact that they were engaged in a romantic relationship with each other, and that Foster had declared personal bankruptcy and been sued for fraud by the Federal Trade Commission in the past.

Salda and Foster sought to exert their control over the victim by isolating her from family and friends. As their influence increased, the victim became increasingly dependent upon them to handle her finances and take care of her daily needs. In return, the victim lavished Salda and Foster with tens of thousands of dollars in cash gifts and the use of a luxury automobile. The victim was also persuaded to spend thousands of dollars to pay the education expenses for Foster’s children, including \$20,000 for one of Foster’s daughters to spend a year abroad studying in China.

“Isolating a victim from her trusted advisors and family should be a red flag for potential fraud,” said Commissioner Lara.

The Department of Insurance’s Investigation Division in Valencia conducted the investigation. The Department learned about the fraud in 2015 after the victim’s family members became suspicious and contacted Adult Protective Services for assistance.

The charges against Salda and Foster include conspiracy, theft from an elder adult, and multiple counts of insurance fraud. This case is being prosecuted by the Santa Barbara District Attorney.

Salda was booked into custody in Santa Barbara County and Foster was booked into custody at the Ventura County Sheriff’s facility. Bail for each has been set at \$500,000.

**Claims Conference of Northern California, August 27-29, 2019**

Come join us in Lake Tahoe, CA for the Claims Conference of Northern California, August 27-29, 2019. CCNC is one of the largest and most diverse educational conferences in our industry. You’ll network with top claim professionals from insurance companies, brokerages and agencies along with service providers from all over the western region of the United States.

Choose from a variety of educational courses covering a wide array of claim challenges and opportunities. Earn free adjuster continuing education credits from a number of key states. Visit with over 75 exhibitors/service leaders providing an array of claims products and services. For professional results and improvements, the Claims Conference of Northern California is the place to be, we continue to create a path to claims success.

Our 2018-19 President, Jennifer Pinney, is working along with a planning committee to update our technology, our education, our innovation in getting claims initiatives to the forefront; in an industry that is always moving, changing and growing. We look forward to sharing in this exceptional event with you this year. Make sure to save the dates on your calendar and prepare to be inspired!

Click this link to sign-up online: <http://claimsconference.org/attendee-registration/>

## A Brief History of the May Pole (Credit to the holiday spot)



Dancing around the maypole, in [Åmmeberg](#), Sweden

Well, it is a fact that May Day, which the children do enjoy with all vibes, is not an overly prominent holiday in America. Yet, it does have a long and notable history as one of the world's principal festivals. The origin of the May Day as a day for celebration dates back to the days, even before the birth of Christ. And like many ancient festivals it too has a Pagan connection.

For the Druids of the British Isles, May 1 was the second most important holiday of the year. Because, it was when the festival of Beltane held. It was thought that the day divides the year into half. The other half was to be ended with the Samhain on November 1. Those days the May Day custom was the setting of new fire. It was one of those ancient New Year rites performed throughout the world. And the fire itself was thought to lend life to the burgeoning springtime sun. Cattle were driven through the fire to purify them. Men, with their sweethearts, passed through the smoke for seeing good luck.

Then the Romans came to occupy the British Isles. The beginning of May was a very popular feast time for the Romans. It was devoted primarily to the worship of Flora, the goddess of flowers. It was in her honor a five day celebration, called the Floralia, was held. The five day festival would start from April 28 and end on May 2. The Romans brought in the rituals of the Floralia festival in the British Isles. And gradually the rituals of the Floralia were added to those of the Beltane. And many of today's customs on the May Day bear a stark similarity with those combined traditions.

May day observance was discouraged during the Puritans. Though, it was relived when the Puritans lost power in England, it didn't have the same robust force. Gradually, it came to be regarded more as a day of joy and merriment for the kids, rather than a day of observing the ancient fertility rights.