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Duty of Care to College Students Credit to Low, Ball & Lynch, San Francisco, CA

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The Regents of the University of California, et al. v. The Superior Court of Los Angeles County
California Supreme Court (March 23, 2018)

The Regents of the University of California was sued by a student who received serious injuries in an attack by another student in a U.C.L.A. classroom during class. For approximately one year before the attack, the attacker had displayed psychological and emotional problems, and U.C.L.A. had been aware of his problems. U.C.L.A. had compelled the attacker to receive psychological counseling, but the attacker's psychological and emotional problems continued. Two days before the attack, the attacker had displayed paranoid and hostile behavior which caused a teaching assistant to send an e-mail to the Dean, requesting advice. The day before the attack, the attacker was supposed to meet with a university group required to evaluate troubled students, but he missed the meeting. U.C.L.A. did not do anything to prevent the attacker from attending classes despite the missed meeting.

The person who was attacked sued the Regents, U.C.L.A., and U.C.L.A. employees for failing to take reasonable protective measures to ensure her safety against a reasonably foreseeable attack by this attacker. The victim alleged that U.C.L.A. had been aware of the attacker's dangerous propensities and had failed to warn or protect the victim from the attacker's foreseeable violent conduct.

Defendants moved for summary judgment on three different grounds. One of the grounds was that colleges have no duty to protect their adult students from criminal acts. The victim argued that U.C.L.A. owed her a duty of care because colleges have a special relationship with students in the classroom. The trial court denied the motion for summary judgment. U.C.L.A. challenged this order in a petition for writ of mandate. The Court of Appeal granted the petition and held that U.C.L.A. owed no duty to protect the victim. The victim petitioned the California Supreme Court for review.

The California Supreme Court held that U.C.L.A. owed a duty of care to the victim based upon a special relationship which exists between a student and the university. While a person has a duty to act with reasonable care under the circumstances, a person who has not created a peril is not liable in tort merely for failing to take affirmative action to assist or protect another unless there is some relationship between them which gives rise to a duty to act. There must be a special relationship between a person who has not created a peril and the person who needs protection from someone else. The victim/plaintiff claimed that there was a special relationship between U.C.L.A. and her which required U.C.L.A. to protect the victim from the attacker. The California Supreme Court specifically held that post-

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President's Message

Not so long ago, it used to be that when you were scheduled for field work, you would prepare a route list and would call the office periodically. That is how our boss kept track of you. Now, there is GPS that may be in your car or certainly on your “smart” phone to track you. If you had to get a rush document somewhere, you might have to get into the car and deliver it. Now, files are in digital formats and can be sent in secure formats.

It seems we are now on task for 24 hours a day with all our “smart” objects. People walk with their phones in their hands, mostly looking down. Even as you watch people that are running or hiking, you see ear buds or headphones. There is a drive to automate all the claims process from reporting to a resolution. Will claims jobs be phased out to automation?

I am an X-Files fan and one of my favorite episodes last season was based upon total automation from the car ride to the restaurant. All the transactions were by an app, menu and credit card. What I got out of it is that machines and artificial intelligence are programs created by humans.

I do not see that the human element will ever be taken out of claims. Humans have the ability to reason and negotiate and face to face contact in itself resolves a lot of issues. Besides, have you ever tried to argue with the GPS in your car? It will keep rerouting you even if you know where you are going and is always recalculating! The only way you win is to turn it off. On the claims side of the phone call, we just get the phone hung up.

So how do we keep our perspective amid all the “smart” technology? One way is to participate in your local claims associations and the CAIIA. It is an easy excuse to not have the time to attend meetings or sit on a committee. When enough people subscribe to that theory, the organization goes away, and we are a little more isolated. Take the time to sit back and look at the whole picture. Participate and share your experience as that cannot be learned in a book.

Please mark your calendars for the CAIIA Annual meeting to be held September 21, 2018 in Berkeley, CA. Details are in this issue as time date is fast approaching.

Each month I am asking a past CAIIA President to share their observations of this organization and their views of change. This month I have asked Jeff Caulkins, who was the CAIIA president in 2011-2012, to write this month's President's message. Jeff continues to be active in the CAIIA and is a great asset. He will be presenting a refresher course at our annual meeting on Roberts Rules. A smooth running meeting with rules in place make it efficient!

As you read his message, I have to tell you I ran across the “unknown adjuster” again. I shook my head when the insured said he was contacted by a person who said he was involved in the claim., supposedly an insurance adjuster according to the insured. The individual did not have a business card or provide the name of the firm that sent him out. *It just makes the claims process look bad to the insuring public!*

Please take the time to reach out to our past presidents to reconnect if you have lost touch. Stay tuned to see who is next!

See you next month!

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



Paul Camacho
CAIIA President



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

Attention: CCNC Volunteers Needed

Your Association is again making its presence known to the insurance industry by having a prime location at the Claims Conference of Northern California. It is being held at "The Village at Squaw Valley Ski Resort" on August 28-30th.

The CAIIA needs you to help populate the booth for the two exhibit days, August 29-30. If you can be at the booth for one session, the CAIIA will pay for your registration fee for the day you are the booth. You will be at the booth for about two hours. If you are at the booth for one session each day (Wednesday and Thursday) your registration is free. You must be a member of the CAIIA to take advantage of this offer. This is a value added service for being a member of the CAIIA. For more info on the CCNC visit : <http://claimsconference.org/>

Please contact Sterrett Harper at harperclaims@hotmail.com and let him know what hours you are available.

DOI Curriculum Board Update from Peter Schifrin

I attended the California Department of Insurance Curriculum Board Meeting on July 19th.

This was my last meeting; Richard Kern has volunteered to take over my post after a thrilling six-year run.

I learned at the meeting that the DOI again tried to introduce a bill (SB 1291) to require individual independent adjuster licensing. The bill did not make it out of committee and I am sure another effort will be made next year.

Other insurance bills in the system of note include: AB 1799 which requires insurers to provide a complete copy of the policy to the insured after a loss (signed on 7/9/18); SB 917 which would require coverage for the proximate cause of a loss with no anti-concurrent causation provision (active and in assembly as of 7/2/18); SB 894 which would allow an insured to combine portions of their policy to rebuild their home and would extend the time to collect ALE from 24 to 36 months (active and in senate as of 7/2/18), and AB 2594, which would extend the suit provision deadline to 24 months if the loss is related to a state of emergency (active and in senate as of 7/3/18).

As usual, I will end with recent licensing statistics – for the first six months of 2018 there were 278 first time test takers and 118 passed, for a 42% success rate. There were 274 repeat test takers and 94 passed, a 34% pass rate. The test remains hard.

It was a pleasure and honor to represent the CAIIA on the Curriculum Board.

Peter Schifrin CAIIA – Past President

The CAIIA Code of Ethics starts with the following
To conduct ourselves at all times so as to command respect within the industry of insurance and with the insuring public.

The order of conduct of an independent adjuster is to listen, to weigh, and to respond to many types of information and evidence. The hardest task for any single person is to first listen. Many times, we neglect to listen to insureds, our fellow adjusters, or even our spouses. This lack of listening taints our view and understanding of many issues. We will not be able to weigh information, or to even respond correctly to what has been presented to us, without first listening.

This error in our thinking can cause us to lose a great deal of respect in the industry. As an appraiser and/or umpire, we are often called to hear evidence and information in which we are requested to render an opinion or decision as to the facts in a case.

How we listen to that information (or not listen)

can affect the outcome of our opinion. One

game we played when we were young

was called

“telephone”. One

person would make a

statement into the ear of the person next to them,

continuing on from person to person, until the last would repeat what they heard. At the end, it was rarely what the first person said. I find that it is very important to listen to the original facts, not what is restated.

When we listen to the facts and weigh them in accordance with the truth, we will respond accurately. This will not only result in respect with our fellow adjusters, but also with others in our industry.

Jeff Caulkins

CAIIA Past President



Jeff Caulkins

CAIIA Past President

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secondary schools have a special relationship with students while they are engaged in activities that are part of the school's curriculum or closely related to its delivery of educational services.

Once the California Supreme Court determined that there was a special relationship between U.C.L.A. and the victim, the California Supreme Court analyzed whether a duty should be imposed upon U.C.L.A. in this particular instance. After analyzing the factors to determine whether a duty existed set forth in the case of *Rowland v. Christian* (1968) 69 Cal.2d 108, the California Supreme Court determined that U.C.L.A. would have owed a duty to the victim to use reasonable care to protect U.C.L.A.'s students from foreseeable violence during curricular activities.

The California Supreme Court remanded the matter to the Court of Appeal to decide whether triable issues of material fact remained on the two other bases for defendant's motion for summary judgment which were not considered by the Court of Appeal.

Comment:

This is the first Calif. case to find that a public college has a special relationship with its students while the students are engaged in activities that are part of the school's curriculum or closely related to its delivery of educational services. This case expands the duty beyond Colleges having a duty to protect people visiting their campuses from reasonably foreseeable criminal activity on their physical grounds. Now, public colleges may have to consider whether a disturbed student poses a threat to other students.

Statute of Limitations for Prenatal Toxic Chemical Exposure

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

Lopez v. Sony Electronics, Inc.

California Supreme Court (July 5, 2018)

When a child is allegedly harmed by in utero exposure to hazardous chemicals, which statute of limitations applies? Toxic exposure claims (Code of Civ. Proc. §340.8(a)), or prenatal injuries (C.C.P. §340.4)?

Plaintiff Dominique Lopez brought suit when she was twelve years old. She had been born with multiple birth defects, including chromosomal deletion, cervical vertebrae fusion, facial asymmetry, dysplastic nails, diverticulum of the bladder, and a misshapen kidney. She alleged that she and her mother were exposed to toxic chemicals at a Sony manufacturing plant, resulting in her birth defects.

Sony Electronics moved for summary judgment, arguing that the action was time-barred under §340.4, the six-year statute of limitations for birth and prenatal injuries. In response, Lopez argued that her action fell under §340.8, which covers injuries caused by toxic exposure. The limitations period under §340.8 is only two years, but unlike §340.4, it permits tolling during minority and periods of mental incapacity.

The trial court granted summary judgment after applying §340.4. A divided panel of the Court of Appeal affirmed.

The Supreme Court opined that this case posed a pure question of statutory interpretation subject to independent review. The Court acknowledged that Lopez's case appeared to fall within the ambit of both statutes of limitations. "It is [a]n action . . . for personal injuries sustained before or in the course of . . . birth" (§ 340.4) and a "civil action for injury or illness based upon exposure to a hazardous material or toxic substance" (§ 340.8, subd. (a))." The Supreme Court had previously held that, "if conflicting statutes cannot be reconciled, later enactments supersede earlier ones, and more specific provisions take precedence over more general ones. *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal 4th 301.

The Supreme Court reversed the lower courts' rulings, holding that the toxic exposure statute under §340.8 applied here because §340.8 postdated §340.4 by more than 60 years. Moreover, its language embraced "any" civil action and did not make an exception for prenatal injury claims falling under §340.4 regardless of when they accrued. Therefore, Lopez's claims were not time-barred.

COMMENT

C.C.P. §340.8 went into effect on January 1, 2004. Before that time, plaintiff's claims would have been subject to §340.4, which did not permit tolling during minority. Even though the §340.4 six-year statute of limitations is longer than the §340.8 two-year statute of limitations, tolling creates a situation like this case, where the statute of limitations is tolled until the minor plaintiff reaches majority.

Come join us in Lake Tahoe, CA for the 25th Anniversary of the **Claims Conference of Northern California, August 28-30, 2018**. 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.

This year celebrates 25 years CCNC has been brought to you by the joint efforts of representatives of the following sponsoring associations:

[CAIIA](#) | [CCAA](#) | [CCCA](#) | [EBCA](#) | [MVCA](#) | [PCAP](#) | [SCA](#)

Go to <http://claimsconference.org/attend-2018/> for more information and to register.



Online Registration is now OPEN!!

The Villages at Squaw Valley
Lake Tahoe, CA

This year we will start the conference off with a short cocktail hour on Tuesday night at 5pm. The Villages at Squaw Valley offer so much entertainment and many wonderful restaurants, so we encourage you to set up those client dinners and do some great networking!

Wednesday night will be very special. CCNC will be proudly celebrating 25 years of bringing you dynamic, entertaining, educational conferences! Join us for a magical evening at the top of the mountain at High Camp. We promise great food, great music and lots of opportunity to catch up and talk to your peers.

Buy your tickets now!

Claims Personnel	Ticket Cost	
	1 Day Pass	2 Day Pass
Carrier Personnel	\$75.00	Same price for one day or both days
Independent Adjuster	\$110.00	\$185.00
Risk Manager	\$120.00	\$195.00
Third Party	\$120.00	\$195.00
Agent/Broker	\$120.00	\$195.00
Property Manager	\$120.00	\$195.00
All Others		
Vendor	\$270.00	\$495.00
Attorney	\$270.00	\$495.00
Other Service Partner	\$270.00	\$495.00

** Tickets for the events are included with each attendee and exhibitor registration.*

Just want to attend the 25th Anniversary Silver Party? Click on Register to Join below, choose the \$80.00 option and we will add you to the list! It is going to be a night to remember!

Register to join the 2018 Conference

On The Lighter Side...

Lexophile is a word used to describe those people that have a love for words, such as "you can tune a piano, but you can't tuna fish", or "to write with a broken pencil is pointless." A competition to see who can come up with the best lexophiles is held every year in an undisclosed location. Here are the winning submissions in 2017.

... A thief who stole a calendar got twelve months.

... When the smoglifts in Los Angeles U.C.L.A.

... The batteries were given out free of charge.

.. A dentist and a manicurist married. They fought tooth and nail.

... A will is a dead giveaway.

... With her marriage, she got a new name and a dress.

... A boiled egg is hard to beat.

... When you've seen one shopping centre you've seen a mall.

.. Police were summoned to a daycare center where a 3-year-old was resisting a rest.

... Did you hear about the guy whose entire left side was cut off? He's all right now.

... A bicycle can't stand alone; it's just two tired.

... When a clock is hungry it goes back four seconds.

... The guy who fell onto an upholstery machine is now fully recovered.

... He had a photographic memory which was never developed.

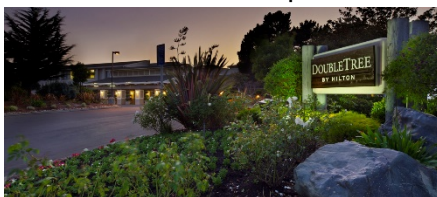
... When she saw her first strands of grey hair she thought she'd dye.

... Acupuncture is a jab well done. That's the point of it.

And finally:

... Those who get too big for their britches will be totally exposed in the end.

CAIA 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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EVENT	COST	#TICKETS	TOTAL PRICE
MEMBER CONVENTION Package (*) (Includes Reception, Continental Breakfast, CE Class, Lunch, Meeting & Gala Dinner)	\$ 150.00	# _____	\$ _____
Spouse/Guest fee Name _____ (Reception, Continental breakfast, & Gala Dinner)	\$ 100.00	# _____	\$ _____
Non-Member Convention Package (Includes Dinner, Continental Breakfast, CE Class, & Lunch)	\$ 175.00	# _____	\$ _____
3 Hour CE Class Only (Adjusting Fine Arts, Digital Forensics, Investigation of Product Liability Failures in Commercial Properties) (Includes Continental Breakfast, CE Class(es), & Lunch)	\$ 100.00	# _____	\$ _____
President's Gala Dinner Only	\$ 75.00	# _____	\$ _____
Grand Total payable			\$ _____

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
09/20 – 6:30 P.M. Welcome Reception	[]	[]
09/21 -- 8:00 A.M. Registration/Breakfast	[]	[]
09/21 – 9:00 A.M. Seminar (3 CE credits-Misc)	[]	[]
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	[]	[]

[John Ratto](#)

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