



**CARL WARREN & COMPANY**  
Claims Management and Solutions

**CW Connects**

August 2017

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## EMPLOYEE SPOTLIGHT

### Carl Warren's Director of Claims, Kim Perbix



#### Why did you decide to pursue a career in claims?

While I was a student at UCLA, I worked in a law office that did subrogation work for State Farm. I actually came out of school wanting to be a claim rep since I had enjoyed the subrogation work. In those days, there were very few companies that had training programs, so I had to go through a recruiter and pay a fee to get my first trainee job.

#### What are your responsibilities at Carl Warren?

As Director of Claims, I am here to serve both our internal staff and our external clients, leading our commitment to providing the best claims handling service in the marketplace. The TPA marketplace is very competitive and our ability to deliver strong claims handling is our opportunity to have clients that value our services and relationship. This all contributes to client satisfaction and retention.

#### You left the Company for a while; what experiences have you brought back with you?

When I left Carl Warren, I had many years of claims management experience in commercial and personal lines. I had an opportunity to gain more expertise in the flourishing, ever-changing world of fraud. The days where fraud simply meant seeing inflated medical bills or contents lists are still with us to some degree but now there are large, organized crime rings and criminal syndicates that are targeting individuals and companies. I bring a whole new level of expertise back to our organization.

#### What significant changes have you seen in the industry in the last year and what do you think lies ahead?

The insurance marketplace continues to be cyclical. We are currently in a soft market where pricing is very competitive. As a TPA, we need to be able to tailor our service to our clients' needs and expectations. The marketplace also expects 'proactive claims handling' where the client can see how the claims adjuster's actions drive the claim to a favorable resolution in a timely manner. With the competitive pricing in the marketplace, our ability to provide strong claims service is what will help us retain clients.

#### What do you like to do in your spare time?

I love to travel to the Napa Valley and learn all I can about wine and the people who make it. I'm also a grandparent to four wonderful grandchildren; spending time with them keeps me very busy and active!

## Restitution; Economic Loss Resulting from Defendant's Conduct



Defendant was driving his pickup truck during the early evening of April 26, 2012, when he was involved in a collision with a 12-year-old boy riding on a scooter. Defendant stopped his truck and checked on the boy, who had been seriously injured in the accident. The victim's mother rushed to the scene. When she arrived, defendant returned to his truck. Defendant later told police that he waited there until he saw the boy loaded into an ambulance, then drove off. At the time of the accident, defendant was unlicensed and on felony probation. He told officers that he left the scene because he was afraid that he had violated his probation by driving without a license.

The victim sustained multiple facial fractures and a fractured clavicle and was diagnosed with a traumatic brain injury. He was hospitalized in intensive care for nine days before being transferred to a rehabilitation center.

The police ultimately identified the vehicle involved in the accident and traced the vehicle to defendant, at which point defendant came forward. In an interview with police, defendant admitted to his involvement in the accident and that he left the scene. Defendant apologized and told officers that he understood he had committed a crime by fleeing the scene.

After defendant Dennis Terry Martinez pleaded guilty to leaving the scene of an injury accident in violation of Vehicle Code section 20001, subdivision (a) (Vehicle Code section 20001(a), commonly known as "hit and run"), the trial court sentenced him to three years in state prison. **The trial court further ordered him to pay \$425,654.63 to the victim as restitution for injuries suffered as a result of the accident.** The trial court made no findings concerning defendant's responsibility for the accident.

The California Supreme Court granted review to resolve the conflict about whether, in imposing a sentence for a "hit and run" violation of Vehicle Code section 20001(a), a trial court may order direct restitution for injuries the victim suffered as a result of the underlying accidental collision.

Where, as here, a criminal defendant is convicted and sentenced to state prison, section 1202.4 of the Penal Code (section 1202.4) provides that the defendant **must pay restitution directly to the victim for losses incurred "as a result of the commission of a crime."** (§ 1202.4, subd.(a)(1); see *People v. Giordano* (2007) 42 Cal.4th 644, 651-652)

As the Legislature that enacted Vehicle Code section 20001(a) undoubtedly understood, even if direct victim restitution for accident-related injuries is not available, that does not mean that an at-fault driver will escape responsibility for the losses he or she has caused. Once the perpetrator has been identified, the victim of a hit and run who believes the other driver was at fault **may obtain civil damages in a tort suit**, just as he or she would if the driver had stopped and provided identification as required by law. And although fleeing the scene may permit drivers to attempt to hide evidence of their fault in the accident, the law accounts for this problem by permitting the trier of fact in a civil action to consider the failure to stop as some evidence of consciousness of responsibility for the accident. (*Brooks v. E.J. Willig Truck Transp. Co.* (1953) 40 Cal. 2d 669, 676.) A driver who breaches the duty to stop thus runs the risk not only of criminal prosecution and possible prison time, but of incurring a material disadvantage in a civil suit as well.

By its terms, section 1202.4 authorizes - indeed, requires - courts in Vehicle Code section 20001 cases to award direct victim restitution for losses resulting from the defendant's crime: that is, flight from the scene of the accident without identifying himself or herself, rendering aid, or otherwise fulfilling the statutory requirements. (Veh. Code, § 20001(a).) Where the flight leads to a delay in the victim's access to medical care, for example, and the victim's injuries are exacerbated as a result, those costs are properly characterized as the "result of the commission of a crime" for the purposes of a restitution order. (Pen. Code, § 1202.4, subd.(a)(1).)

**Section 1202.4 does not, however, permit courts to order direct victim restitution for losses that occur as a result of an underlying accident that involves no criminal wrongdoing.**

*Article Courtesy of [Ernest A. Long](#), ADR, a full-time mediator in Sacramento. His practice includes all types of civil litigation, to include personal injury, products liability, governmental entity, breach of contract, labor and employment matters, subrogation and property damage, farming and ranching, professional errors & omissions, real estate non-disclosure cases, wage and hour, and damage to real property claims. [Click here](#) for more of Ernie's case studies.*

# PREVENTING PLAYGROUND INJURIES

Many people have great memories of going out to the backyard or to the local park and playing on the swings or other apparatus. However, for some children, it isn't always fun.



According to the Consumer Products Safety Commission, each year approximately 50,000 children go to U.S. hospital emergency rooms because of injuries on home playground equipment and more than 200,000 children go to the hospital for injuries that occur on public playground equipment.

The most common injuries occur because of falls (about 80% of injuries occurring on home equipment and 44% of injuries occurring on public playground equipment). However, many children also die from entanglement with ropes, cords or leashes that were attached to equipment, or when drawstrings on their clothing get caught on equipment. Other common causes of injuries or death related to playground equipment

are caused by equipment issues, like breakage or tip-over.

How can we give our children those great memories of playing at the park or in the yard, but still keep them safe? Click below to read more on how to Prevent Playground Injuries at the public park.

[Read More](#)

Article courtesy of [Robin Holmes](#), Claims Supervisor at Carl Warren & Company.

## NEW CLIENT WELCOME



We are excited to announce that Plano Synergy, a manufacturer of products for outdoor-life enthusiasts, recently signed a three-year contract with Carl Warren. They selected us as their Third Party Administrator (TPA) due to our product liability and litigation management experience and our partner-client relationships.

The adjuster on the account visited Plano Synergy's Research & Development facility in Florida where she had the opportunity to meet with their engineers, shoot a bow and arrow, and familiarize herself with their complex product line.

Plano Synergy's premier brands include Ameristep, Avian-X, Barnett Crossbows, BloodSport, Caboodles, Creative Options, Evolved Flexitone, Frabill, GroundAFX, Halo Optics, No Limit Archery, Plano, Tenzing,

## 8 CRAZY SUMMER FACTS



Did you know:

1. **The "dog days of summer"** are the weeks between 7/3 and 8/11 and are named after the Dog Star (Sirius) in the Canis Major constellation. The ancient Greeks blamed Sirius for the hot temperatures, drought, discomfort, and sickness that occurred during the summer.
2. **Scientists argue** that summer babies are significantly more likely to suffer from mood swings than babies born in other seasons.
3. **The Eiffel Tower** actually grows in the heat of the summer. Due to the iron expanding, the tower grows about 6 inches every summer.
4. **On July 10, 1913** in Furnace Creek, California (Death Valley), the temperature reached a record-setting 134 degrees Fahrenheit - the highest temperature ever



Wilgame Innovations, and Zink Calls.



Carl Warren handles product liability claims for clients nationwide. We look forward to our partnership with Plano Synergy.

## CONNECT WITH US



- recorded.
5. **It has been said that the reason students** have summer off is because in the 1800s, it was simply too hot to go to school, so students just didn't show up anyway. Lawmakers eventually saw the sense in this and fought for a school-free summer for students.
  6. **The summer solstice** - the longest day of the year - happens when the Earth's axis is the most tilted toward the sun.
  7. **Summer is** the whole months of December, January, and February in the Southern Hemisphere and the whole months of June, July, and August in the Northern Hemisphere.
  8. **More thunderstorms** occur during the summer than at any other time of the year.

Source: Scottsdale Health Magazine

## FIDGET SPINNERS: DANGEROUSLY FUN

### Manufacturers of the latest toy fad are vulnerable to liability claims.



Fidget spinners are small, palm-sized gadgets that have prongs and circular bearings that will spin between on a person's fingers. The bearings in the center allow them to spin, and the bearing can be brass, steel, ceramic, titanium or other materials.

#### Lack of regulation and proven effectiveness

Fidget spinners were initially marketed as a tool to help children with Attention-Deficit/Hyperactivity Disorder (ADHD), autism or anxiety to improve their focus by relieving the need to fidget, but as with any new or redesigned gadget they soon became popular with the masses. They are now all the craze and flying off of toy shelves and mall kiosks; they can be found for well under \$10 or as high as \$30.

To date, there have no been confirmed studies to conclusively link fidgeting with less anxiety or increased concentration. Fidget spinners are not approved by the FDA, so they are not regulated in their safety, product design or composition. Some brands do contain age restrictions and choking hazard warnings, but there are certainly no warnings of the dangers of their misuse.

#### Potential dangers

Fidget spinners can prove to be hazardous and even deadly, particularly to children, when taken apart, broken or used in a manner that is not intended. They are comprised of small parts that have been known to fall off and cause choking hazards when swallowed. Many have what seem to be weights about the size of a penny at the ends of the blades. This makes them easy to swallow in the hands of younger children. One child had to have surgery to remove the part she had swallowed, and another child got the weight stuck on his finger and had to have the spinner part cut off in an emergency room.

When spinning, some of them are designed with edges that are sharp enough to even cut through flesh. An actress in London posted on Instagram that she was forced to drop out of a play because a fidget spinner went awry in a shop, struck her behind the ear, causing a concussion requiring up to two weeks of bed rest.

Because of these and other incidents, the Consumer Product Safety Commission (CPSC) is investigating the spinners. The Good Housekeeping Institute tested various spinners and determined that they are not suitable for children under three years old.

#### Insurance implications

Naturally, when a product is defective or causes injury, insurance can be brought into the claim. Product liability and negligence issues can arise. While some product liability is covered by the commercial general liability (CGL) policy under products-completed operations liability, businesses that manufacture, distribute or sell potentially hazardous products are better served by the coverages of a specific Products Liability policy to cover the legal liability for the quality of their products.

For example, the ISO CGL does not provide coverage for manufacturing defects, or for product recall. Product liability insurance provides coverage for an insured's liability for bodily injury or property damage from a third party due to a defect or malfunction of a product, and pays for the insured's legal fees and any damages awarded because of the faulty product, as well as reimbursement for any products that need to be recalled.

Regardless of the type of injury, the actual legal basis for a product liability claim will be negligence of the designer or manufacturer of the toy. Four main elements would need to be proven in the claim:

- the toy was defective;
- the defective toy was caused by negligence of the designer or manufacturer;
- the injury was a direct result of the negligence in design or manufacture of the toy;
- the injuries were compensable damage.

A toy manufacturer is required by law to exercise reasonable care in its design and manufacture so that the toy does not cause undue harm. It would be unreasonable for a manufacturer to absolutely cover any and all ways a child could be injured by the toy (such as in their misuse).

An exception to this would be where the design or manufacture of a toy is clearly hazardous because of its obvious dangerous design, manufacturing flaw or inadequate warnings. In this case, the manufacturer would be subject to strict liability and the courts would not require that the claim prove negligence, but rather only that the injuries were compensable (as in the case of miniature cars painted with lead based paint which resulted in lead poisoning to a child).

In the case of children's products, product liability claims can be made against the manufacturer, supplier, distributor or retailer/seller. Because the seller could be held liable should the manufacturer go out of business or not be identified or other, they must do everything reasonably possible to ensure that the toys they sell are safe for children. This is especially true when the products are made in different countries, as the seller needs to be responsible for offering toys that meet the industry's quality and safety standards.

The fidget spinners on the market today are a trend that will likely fade in popularity over time, such as the Yo-Yo and Rubik's cube. Until that time, the industry could very well see claims arising from the hazards of choking and misuse of these popular toys.

Article courtesy of [Karen L. Sorrell](#), CPCU an editor with [EC&S Online](#), the authority on insurance coverage interpretation and analysis for the P&C industry. It's the resource agents, brokers, risk managers, underwriters, and adjusters rely on to research commercial and personal lines coverage issues.

Carl Warren is an employee-owned Third Party Administrator with 70+ years of experience. We have offices nationwide and specialize in liability and property claims management and subrogation services.



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