

# FRYE *day Report*

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## ETHICS AND CLAIM SERVICE

In today's business environment it is vital our approach to our work shouts ethical treatment of our clients, as well as our claimants. Study after study has demonstrated organizations which provide a clear vision of claims practices based upon ethical practices are considerably more successful over the long-term than organizations suffering ethical lapses.

Although it should be self-evident that success follows ethical treatment of our constituency nonetheless many organizations fail to stress the high ethical standards and quality service which ensures that success.

Experts suggest there are four (4) major areas in which individuals and organizations demonstrate their ethical values, i.e.,

1. **Honesty and integrity**
2. **Respect and caring for others**
3. **Promise keeping – trustworthiness**
4. **Personal accountability**

But let's provide meaning or context to the aforementioned:

**Honesty & Integrity** – Candid, forthright and truthful

**Respect and Caring for Others** – Courteous, respects rights of others – and treats others as they would like to be treated

**Promise Keeping and Trustworthiness** – Doing what you

say you will do – having a sense of equity

**Personal Accountability** – Owning up to mistakes, taking responsibility for correcting errors



Further examination of the above more than suggests the provision of quality service exemplifies ethical treatment of all of the parties to the process, e.g., customer requires information delivered on a timely fashion and when we deliver then we

are demonstrating respect and caring for the customer: Such communication when delivered forthright and courteously respects the rights of all of the stakeholders.

The opposite behavior of failing to take responsibility when something goes wrong is a sure way for an organization to lose customers or worse to incur litigation and related costs.



Failure to return phone calls, failure to dispose of salvage in a timely manner, failure to document damages and more seriously, failing to advise an insured of potential for an excess judgment can lead to allegations of bad faith.

Personal accountability resides with each member of the claims organization and is demonstrated through them.

Therefore, the organization's efforts to provide a clear vision and reinforce that vision must reach where the rubber meets the road,

i.e., the desk adjuster.

Vince Lombardi said, "The quality of a person's life is in direct proportion to their commitment to excellence, regardless of their field of endeavor."

It is our path to choose since organizational excellence depends upon the path we take.



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# WORKERS' COMPENSATION FORUM

## TORTS: Employer May Be liable for Damages Caused by Accident Involving Employee Driving Home in Personal Vehicle

*Lobo v. Tamco, Court of Appeal, Fourth District (February 24, 2010)*

Under the theory of “respondent superior”, employers are vicariously liable for tortious acts committed by employees during the course and scope of their employment. A general exception applies where the employee is going or coming from work. Under the “going and coming” rule, employees are generally deemed to be outside of the course and scope of employment during their daily commute. California courts have recognized a limitation on the going and coming rule where the use of the employee's car gives some incidental benefit to the employer. This limitation is tested in this case.

Defendant Luis Duay Del Rosario left the premises of the employer, Defendant Tamco, in his personal motor vehicle. As Del Rosario left the Tamco driveway and turned onto a highway, he collided with a motorcycle driven by Daniel Lobo, a

San Bernardino County Sheriff. Lobo was killed in the accident.

Lobo's widow and minor children filed two separate wrongful death actions, which were consolidated. Plaintiffs alleged that Del Rosario was acting within the course and scope of his employment by Tamco at the time of the accident. Tamco filed a motion for summary judgment contending that Del Rosario was not acting within the course and scope when he left work in his personal vehicle. As such, Tamco contended that it could not be held vicariously liable. The trial court granted the summary judgment and Plaintiffs appealed. The Fourth Court of Appeal reversed.

On appeal, Plaintiffs focused on the limitation of the going and coming rule, where an employer gains some incidental benefit by the employee



Tamco Steel Company

using his personal vehicle. Plaintiffs presented evidence that Tamco manufactured steel bars used in construction. Del Rosario, a metallurgist, was the manager of quality control. On occasion, Del Rosario would visit a client to go over quality control issues. Del Rosario testified at deposition that he used his personal vehicle approximately 10 times over 16 years to visit client sites. On those occasions, Del Rosario was reimbursed his driving expenses by the company. Del Rosario did keep work equipment in his vehicle in case he was called upon to visit a client site. Based upon this evidence, Lobo argued Tamco received an incidental benefit from Del Rosario's

use of his personal vehicle, thereby negating the going and coming rule.

Tamco contended in all cases where the limitation to the going and coming rule was applied, driving was an “integral” part of the employee's job. Here, Tamco argued Del Rosario's occasional use of his own car to visit client sites was insufficient to be deemed an integral part of the job. The Court of Appeal disagreed and held what was important was that Tamco relied on Del Rosario to make his personal vehicle available for the employer's benefit. The Court held that Tamco benefited when Del Rosario could promptly respond to customer complaints – even if this was rare. The Court, therefore, reversed the judgment in favor of the Defendants.

### COMMENT

This is a harsh decision for employers and could prove to substantially negate the “going and coming” rule in California.



## How Devious Are You?

Published originally in the 15th century, Niccolo Machiavelli's book, *The Prince*, discusses the use of manipulation and power as a technique for controlling other people. The term “Machiavellian” has come to be used to describe devious, manipulative people who are motivated only by their own self-interest.

How Machiavellian are you? This test may help you find out. Respond to each statement below by using the following scale:

- 1 = Disagree strongly
- 2 = Disagree mildly
- 3 = Neutral; no opinion
- 4 = Agree mildly
- 5 = Agree strongly

- 1. The best way to handle people is to tell them what they want to hear.
- 2. When you ask someone to do something, it's better to give the real reasons than reasons that might carry more weight.
- 3. Anyone who trusts anyone else is asking for trouble.
- 4. It's hard to get ahead without cutting corners a little.
- 5. It's safest to assume that everyone has a vicious streak that will come out if given the opportunity.
- 6. You should act only when your action is morally right.
- 7. Most people are basically good and kind.
- 8. There is no excuse for lying.

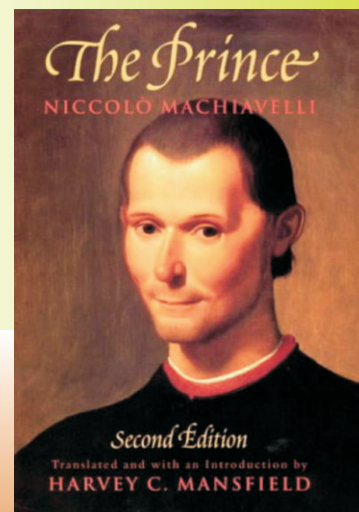
- 9. Most people get over more easily, the death of a parent than the loss of property.
- 10. Most people won't work hard unless they are forced to.

*Richard Christie and Florence L. Geis, Studies in Machiavellianism, Academic Press, New York, NY*



For items 2, 6, 7, and 8, reverse your score so that 5 becomes 1, 4 becomes 2, and so on. Then add up all ten numbers for your total score. A score of 25 is average. A higher score – 38, for example – would classify you as High Mach. A significantly lower score makes you a Low Mach.

### SCORING



## Adjuster Beware: Failure to notify an insured claimant of an applicable contractual limitations clause may prevent the insurer from relying upon the clause to defeat a claimant's lawsuit

### CASE

*Superior Dispatch, Inc. v. Insurance Corporation of New York (2010) 181 Cal.App. 4th 175*

### FACTS

The court penalized insurers by preventing them from relying on a powerful defense to lawsuits filed by an insured claimant for the recovery of a claim where the insurer fails to notify the insured claimant of any contractual limitations provisions applicable to the claim.

Insurance Corporation of New York ("Inscorp") issued a cargo liability insurance policy to Superior Dispatch, Inc. ("Superior"), a trucking company. The policy contained a contractual limitations provision which required that any lawsuit for the recovery of a claim under the policy be commenced within 12 months after the insured discovered an event that gives rise to a claim.

Superior was hired to carry a dump truck on a flat rack trailer from the Port of Los Angeles to another location. The top of the dump truck struck an overpass while

the trailer was passing under a bridge on July 10, 2003.

Superior submitted a claim to Inscorp on July 17, 2003. Inscorp's claims adjuster sent letters to Superior and its legal counsel denying the claim as there was no coverage under the terms of the policy. Inscorp's claims adjuster never notified Superior or its legal counsel there was a one-year contractual limitations provision applicable to the claim.

Superior filed a lawsuit against Inscorp after the expiration of the contractual limitations period on May 20, 2005, alleging, among other things, the denial of the claim was in bad faith and that Inscorp failed to provide notice of the one-year contractual limitations provision.

### THE COURT'S RULING

The court concluded California Code of Regulations section 2695.4(a) requires an insurer to notify its insured claimant of any contractual limitations provisions that may apply to the claim regardless of whether the insured is represented by counsel. The court further concluded an insurer's failure to notify its insured of a contractual limitations provision prohibits the insurer from later relying on the provision.

A contractual limitations provision could be a very powerful tool for the insurer's legal counsel. If the insured claimant

brings a lawsuit for recovery of a claim after the expiration of the contractual limitation period, the insurer's legal counsel can rely on the contractual limitations provision to potentially defeat the insured claimant's lawsuit at an early stage in the litigation thereby saving the insurer the cost of having to engage in protracted litigation.

The lesson for claims adjusters is whenever they are presented with a claim, adjusters should check if there is a contractual limitations provision applicable to the claim. If such a provision applies, or even if the provision only marginally applies, the adjuster should notify the insured claimant of the provision in their first written correspondence to the insured so as to not waive the insurer's ability to later rely on the provision in court.



## 18 COMMON WORK E-MAIL MISTAKES

Most of us rely on e-mail as one of our primary communication tools. And, given the number of messages we send and receive, we do it with remarkable success.

But as with anything, the more e-mails we send, the more likely we are to screw one up: and, simple e-mail mistakes can be disastrous. They can cost us a raise, promotion – even a job. The following are some of the worst e-mail mistakes employees make and how to avoid them:

- 1. Sending before you mean to.** Enter the recipient's e-mail address only when your e-mail is ready to be sent. This helps reduce the risk of an embarrassing misfire, such as sending an important e-mail to the wrong person or e-mailing a half-written note.
- 2. Forgetting the attachment.** If your e-mail includes an attachment, upload the file to the e-mail before composing it. This eliminates the embarrassing mistake of forgetting it before hitting "send," and having to send another e-mail saying you forgot to attach the document.
- 3. Expecting an instant response.** Don't send an e-mail and show up at the recipient's desk 30 seconds later asking if they've received it. They did, and they'll answer at their convenience. That's the point of e-mail.
- 4. Forwarding useless e-mails.** I've never seen a single e-mail forwarded at work that was beneficial. Whether it's a silly joke or a heartwarming charity, there's never a time to share an e-mail using work e-mail.
- 5. Not reviewing all new messages before replying.** When you return to the office after a week or more away, review all new e-mails before firing off responses. It might be hard to accept, but odds are, things did march on without you. Replying to something that was already handled by a co-worker creates extra communication, which can lead to confusion, errors, and at the very least, wasted time for everyone involved.
- 6. Omitting recipients when you "reply all."** Unless there's an important reason to omit someone, don't arbitrarily leave people off the response if they were included on the original message.
- 7. Including your e-mail signature again and again.** Nor do you need to include it at the end of an e-mail you sent to your



long-time co-worker who sits six feet away. If you have your e-mail program set to automatically generate a signature with each new message, take a second to delete it when communicating with someone who knows who you are. It's always wise to include your phone number, but the entire blurb with your title and mailing

address is often nothing but clutter.

- 8. Composing the note too quickly.** Don't be careless; write every e-mail as if it will be read at Saint Peter's Square during the blessing of a new Pope. Be respectful with your words and take pride in every communication.
- 9. Violating your company's e-mail policy.** Many companies have aggressive spam filters in place that monitor "blue" language. From that famous four-letter word to simple terms, such as "job search," don't end up tripping the system by letting your guard down.
- 10. Failing to include basic greetings.** Simple pleasures do the trick. Say "hi" at the start of the message and "thanks" at the end. Be sure to use the recipient's name. Be polite yet brief with your courtesy.
- 11. E-mailing when you're angry.** Don't do it. Recall buttons are far from a perfect science, and sending a business e-mail tainted by emotion is often a catastrophic mistake. It sounds cliché, but sleep on it. Save the message as a draft and see if you still want to send it the next morning.

(Continued on page 4)

Quote  
of the  
Quarter



"If I miss one day's practice, I notice it. If I miss two days, the critics notice it. If I miss three days, the audience notices it."

~ Ignacy Paderewski, Polish concert pianist

## 18 COMMON WORK E-MAIL MISTAKES

(Continued from page 3)



12. **Underestimating the importance of the subject line.** The subject line is your headline. Make it interesting, and you'll increase the odds of getting the recipient's attention. Our in-boxes are cluttered; you need to be creative and direct to help the recipient cut through the noise. You should consistently use meaningful and descriptive subject lines. This will help your colleagues determine what you're writing about and build your "in-box street cred," which means important messages are more likely to be read.
13. **Using incorrect subject lines.** Change the subject line if you're changing the topic of conversation. Better yet, start a new e-mail thread.
14. **Sending the wrong attachment.** If you double-check an attachment immediately before sending and decide you need to make changes, don't forget to update the source file. Making corrections to the version that's attached to the e-mail does not often work, and it can lead to different versions of the same doc floating around.
15. **Not putting an e-mail in context.** Even if you were talking to someone an hour ago about something, remind them in the e-mail why you're writing. In this multi-tasking world of ours, it's easy for even the sharpest minds to forget what's going on.
16. **Using BCC too often.** Use BCC (blind carbon copy) sparingly. Even though it's supposed to be a secret, it rarely is. Burn someone once and they'll never trust you again. Likewise, forwarding e-mail is a great way to destroy your credibility. When people send you something, they aren't expecting you to pass it on to your co-workers. The e-mail might make its way back to the sender, who will see that their original message was shared. They might not call you on it, but they'll make a mental note that you can't be trusted.
17. **Relying too much on e-mail.** News flash! No one is sitting around staring at their inbox waiting for your e-mail. If something is urgent, use another means of communication. A red "rush" exclamation point doesn't compare to getting up from your desk and conducting business in person.
18. **Hitting "reply all" unintentionally.** This is a biggie. And it's not just embarrassing on what you wrote in that e-mail, it can ruin your relationship with a co-worker or even your boss. Take extra care whenever you respond so you don't hit this fatal button.

Andrew G. Rosen is the founder and editor of *Jobacle.com*, a career advice blog. He is also the author of *How to Quit Your Job*.



## FRYE ALL STAR

### SHERI N. GORDON



Sheri N. Gordon (left)

Jersey born and raised. I began in the insurance industry as an appointment scheduler for a small appraisal company 20 years ago. I began advancing in the industry after taking in-house claims handling courses, after handling a variety of casualty claims and property losses. After 25 years in the insurance industry, it's liability claims I find to be the most interesting.

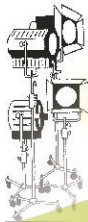
When you asked 20 years ago what happened in a simple rear end collision, the answer would be I spilled my coffee or, I was changing the radio station. Now the answer is I was texting, talking on the cell, or looking at my GPS, and still 'it wasn't my fault.'

I joined the Frye family in July 2010 as a part of the Commercial Taxi Program and I handle 7 states of taxi cab claims. It's been a very big challenge but the Frye family is very supportive and continues to be as I acclimate to the position.

When I'm not handling claims, I'm a mom, my son is 27 years old and working on his PhD in Physical therapy. I'm the eldest of two daughters, I'm a sister and an aunt; my only niece Jasmine is a freshman in college in South Carolina.

While I enjoy my work, I'm most passionate about my family - they are my foundation and they bring me joy.

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## Spotlight On Humor



### The Final Truth . . .

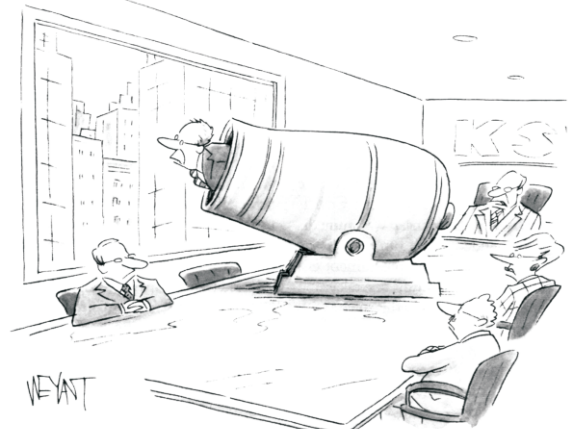
The old fellow had been suffering a slow death for weeks. His faithful wife had been there throughout, holding his hand, feeding him, etc. As his strength slowly slipped away, he mustered up the energy to make his final confession.

He motioned for his wife to come closer and said, "Honey, I know that I'm about to meet the Lord, and I want to meet him with a clean slate.

So there is something I need to tell you. You know Sally who lives a couple of streets over from us. Well, I've been seeing her for quite a few years now. In fact, I'm the father of her two cute little children."

The wife leaned close to his ear and whispered, "I know darling, that's why I poisoned you."

## Comedy Corner



"All in favor?"

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