

CALIFORNIA SUPREME COURT IMPOSES DUTY TO PROTECT ON CALIFORNIA COLLEGES AND UNIVERSITIES

On March 22, 2018, the California Supreme Court announced its decision in *The Regents of the University of California v. The Superior Court of Los Angeles*, which arose out of a student-on-student assault on a University of California campus in 2009. The court held that California colleges and universities have a duty to protect their students from foreseeable violence during curricular activities. This represents an expansion to the college level of California case law that has already imposed upon high schools a duty to protect students from assault on campus.

BACKGROUND

The case arises out of a student stabbing another student during a chemistry lab. University of California, Los Angeles (UCLA) student Damon Thompson had a history of experiencing auditory hallucinations, of which campus mental health services personnel were aware. He complained to university administrators and professors several times of other students in the classroom and dormitory criticizing him and he was expelled from university housing for assaulting another student. One morning, Thompson stabbed fellow student Katherine Rosen during a chemistry lab. Rosen sued the university and several of its employees for negligence, arguing they failed to protect her from Thompson's foreseeable violent conduct.

THE DECISION

Colleges and universities are not usually held liable for the criminal acts of their students. However, the law recognizes a duty to control, warn or protect when a defendant has a "special relationship" with a foreseeably dangerous person. For example, the law recognizes special relationships between a guard and those in custody, an employer with its employees, and a landlord with tenants. Rosen's complaint alleged that UCLA had a special relationship with her as an enrolled student, which included a duty "to take reasonable protective measures to ensure her safety against violent attacks and otherwise protect her from reasonable foreseeable criminal conduct, to warn her as to such reasonable foreseeable criminal conduct on its campus and in its buildings." In finding the existence of a special relationship here, the court noted college students' dependency on the institutions they attend, the colleges' control over the campus environment, and the limitation of that duty to the members of the campus community, as opposed to the public at large. Considering these unique features of the collegiate environment, the court held that colleges and universities have a special relationship with their students and a duty to protect or warn them from foreseeable violence during curricular activities.

The court limited its holding to activities that are tied to the school's curriculum. The decision states, "colleges are not the ultimate insurers of all student safety. We simply hold that they have a duty to act with reasonable care when aware of a foreseeable threat of violence in a curricular setting. Reasonable care will vary under the circumstances of each case. Moreover, some assaults may be unavoidable despite a college's best efforts to prevent them. Courts and juries should be cautioned to avoid judging liability based on hindsight." However, to the extent the court did not define "curricular setting," further litigation will define the boundaries over which colleges and universities are expected to have this duty.

The Court also noted that, in an appropriate case, the duty may be fully discharged if adequate warnings are conveyed to the students at risk.

The case was remanded to the lower court for further proceedings on whether UCLA had breached its duty to Rosen and the extent of her damages. For California colleges and universities, many questions remain, including the extent of what could be considered curricular activities and whether a warning is sufficient discharge of their duty under certain circumstances. This case is one we will be watching closely, as the courts' ultimate decision regarding whether UCLA breached its duty to Rosen will be instructive on how colleges and universities are expected to carry out this duty to protect.

For Keenan's clients that participate in the Statewide Association of Community Colleges JPA (SWACC), coverage for any claims made against a member in this area, subject to exclusions such as intentional negligent acts of the member, is afforded under the Liability section of the Memorandum of Coverage.

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