RECENT DEVELOPMENTS IN INSURANCE COVERAGE

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The cases and materials presented here are in summary and outline form. To be certain of their applicability and use for specific claims, we recommend the entire opinions and statutes be read and counsel consulted.
RECENT DEVELOPMENTS IN INSURANCE COVERAGE

I. WHO IS AN INSURED


In State Farm Mut. Auto Ins. Co. v. Progressive Northern Ins. Co., 2015 IL App (1st) 140447, the Appellate Court, First District, interpreted a definition of “relative” appearing within two automobile policies. In State Farm, a father and step-mother were named insureds under two separate auto policies. These policies provided underinsured motorist coverage to the “relatives” of the father and step-mother, which was defined as follows:

Relative – means a person related to you or your spouse by blood, marriage or adoption who resides primarily with you. It includes your unmarried and unemancipated child away at school.

State Farm, 2015 IL App (1st) 140447, ¶ 6.

After the named insureds’ son/step-son was involved in an accident, he sought underinsured motorist coverage as a “relative.” The insurance carrier denied coverage, contending that the individual did not qualify as a relative at the time of the accident. According to the undisputed facts of the case, this individual was

[Relat]ed to his father by blood and stepmother by marriage. . . . [He] was unmarried, unemancipated, and living in a campus-owned apartment [at Colorado College] at the time of the accident. [He] considers both his father’s and mother’s homes to be his residences, and when he returned to Chicago during vacations and holidays he attempted to split his time between the households on a ‘50-50’ basis. He came and went from both households as he pleased; he had keys to both houses and kept possessions at both locations. The facts show that [he] used his father’s address for school billing records as well as for his health care and health insurance.

Id. ¶ 12.

During the coverage litigation, the auto insurer argued that the son/step-son did not qualify as a relative because an individual had to satisfy both lines of the definition of “insured” to qualify for coverage and it was undisputed that the son/step-son did not “primarily reside” with his father and step-mother at the time of the accident. The appellate court disagreed with the insurer’s analysis. Id. ¶ 82.
The appellate court noted that the second line of the definition of “relative” started with the pronoun “it.” The court reasoned that, “if the pronoun ‘it’ refers back to the word ‘person,’ then the two lines are connected, with the second line expounding on the meaning of the word ‘person’ in the first line. However, if the word ‘it’ refers back to the word ‘relative,’ then each line is independently defining the term relative.”  

According to the court, the pronoun “it” cannot refer back to a “person” (rather only “he” or “she” can) but it could refer back to a term, such as “relative.” As a consequence, because the pronoun “it” within the definition could only refer back to “relative,” then each line of the definition of “relative” independently defined the term.  

Because each line independently defined the term “relative,” then an unmarried and unemancipated child away at school could qualify as an insured under the policy — even if he did not primarily reside with the named insureds.

**B. Leased Vehicle Not a Covered Auto: Schuster v. Occidental Fire & Cas. Co.**

In *Schuster v. Occidental Fire & Cas. Co.*, 2015 IL App (1st) 140718, the Appellate Court, First District, interpreted a gap coverage provision within a commercial trucking policy to preclude coverage for leased vehicles. In *Schuster*, a trucking company was covered by a liability policy which, through the selections of the insured, covered “[o]nly those ‘autos’ described in Item Three of the Declarations for which a premium charge is shown.”  

Additional, according to the automatic gap coverage provided by the policy, “an ‘auto’ you acquire will be a covered ‘auto’ for that coverage only if:

a. We already cover all ‘autos’ that you own for that coverage or it replaces an ‘auto’ you previously owned that had that coverage; and

b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

In *Schuster*, a hauling truck leased by the trucking company was involved in an accident. The leased hauling truck was not listed as an insured auto on the policy. It was also undisputed that the trucking company never owned the leased truck. After the accident, the trucking company submitted a commercial policy change request form asking that the leased truck be added to the policy.  

After the estate of a woman killed in the accident sued the trucking company, the insurer denied coverage. On appeal, the appellate court agreed that no coverage existed. According to the court, “when the [insurance] contract is read as a whole, it is clear that the only vehicles that were covered by this liability policy were vehicles that [the trucking company] owned.”  

Furthermore, even assuming that the policy could cover leased vehicles, the court found that the “automatic gap coverage” (which would be necessary for coverage) could not apply because the
clear language of the automatic gap coverage only applied to vehicles owned by the insured. *Id.* ¶ 22.

**II. THE SCOPE OF INSURING AGREEMENTS**

**A. Scope of Professional Services**


*Margulis v. BCS Ins. Co.*, 2014 IL App (1st) 140286, addressed the scope of the insuring agreement for liability policy covering professional services. In *Margulis*, an insurance agency was covered under a professional liability policy with the following terms:

**COVERAGE.** The Company does hereby agree to pay on behalf of the Insured such loss in excess of the applicable deductible and within the limit specified in the Declarations sustained by the Insured by reason of the liability imposed by law for damages caused by any negligent act, error or omission by the insured arising out of the conduct of the business of the Insured in rendering services for others as a licensed Life, Accident and Health Insurance Agent . . . .

*Margulis*, 2014 IL App (1st) 140286, ¶ 6. The insurance agency was then sued in a class action complaint for violating the Telephone Consumer Protection Act because it transmitted unsolicited pre-recorded telephone calls to residential telephone lines advertising its insurance services. *Id.* ¶ 1. The agency tendered this lawsuit to its professional liability carrier, who denied coverage.

In the ensuing coverage litigation, the Appellate Court, First District, agreed with the professional liability carrier and found that coverage was not triggered under the professional liability policy and that the carrier had no duty to defend. According to the appellate court:

Comparing the class action petition against [the insurance agency] and the BCS policy, we do not read the allegations in the petition as falling within the potential scope of the policy’s coverage because the allegedly negligent acts, errors or omissions – the transmission of automated, unsolicited telephone calls advertising [the agency’s] services – did not arise out of the conduct of [the agency’s] business in rendering services for others as an insurance agent, general agent or broker. We do not agree with [the plaintiff] that “all that the BCS Policy requires” is “a negligent act arising out of the conduct of [the] insurance agency business.” Such interpretation effectively deletes the “rendering services for others” language. We will not interpret a policy in a manner that renders provisions of the policy meaningless.

*Id.* ¶ 28.
2. **Hilco Trading, LLC v. Liberty Surplus Ins. Corp.**

In *Hilco Trading, LLC v. Liberty Surplus Ins. Corp.*, 2014 IL App (1st) 123503, the Appellate Court, First District, found that a complaint against the insured triggered its professional liability policy. In *Hilco Trading, LLC*, a company was in the business of providing expert professional services consisting of the valuation of various types of assets. *Hilco*, 2014 IL App (1st) 123503, ¶ 3. It had a claims-made professional liability providing coverage for “claims” against the company. The policy defined “Claim” as the “receipt of a civil action *** naming the Insured seeking Damages *** arising out of a Wrongful Act by the Insured or any Entity for whom the Insured is legally liable.” *Id.* ¶ 4. The policy defined “Wrongful Act” as “any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty in the rendering of or failure to render Professional Services.” “Professional Services” was defined as “services . . . which are provided by the Insured to a third party for a monetary fee” and included “[v]alue opinions in support of asset based lending.” *Id.*

In *Hilco Trading*, a coverage dispute arose after the insured was sued for negligent representation by two entities. The insured allegedly had made inaccurate appraisals of the assets of a related corporation. In the ensuing litigation, the appellate court ultimately found that a duty to defend existed under the professional liability policy. First, the appellate court found that there was “no dispute that the appraisal services performed by [the insured] fell within the definition of ‘professional services’ under the terms of the [professional liability] policy. *Id.* ¶ 27. Likewise, despite the fact that the insured appraised assets of a related corporation, the appraisals were ultimately made for the benefit of third party financial companies who had loaned money based on the appraisals. As a consequence, the court found that the professional services were “provided . . . to a third party” within the meaning of the professional liability policy. *Id.* ¶¶ 27-35.


*Doyle v. Country Mut. Ins. Co.*, 2014 IL App (2d) 121238, concerns the extension of personal and advertising injury coverage to a wrongful eviction. In *Doyle*, the insured was covered under a business liability policy which covered “sums that the insured becomes legally obligated to pay as damages because of ‘bodily injury,’ ‘property damage,’ or ‘personal and advertising injury’ to which this insurance applies.” *Doyle*, 2014 IL App (2d) 121238, ¶ 6. The policy’s definition of “personal and advertising injury” included “the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor.” *Id.* ¶ 6. The policy also contained an intentional acts exclusion and an exclusion for personal and advertising injuries arising out of a breach of contract. *Id.*

In *Doyle*, the insureds owned property that they had leased to a tenant. After the insureds sold the property, they removed the tenant’s personal items from the building and placed those items in a garbage dump or storage. After doing so, the tenant sued the insureds for “a violation
of the Visual Artists Rights Act of 1990, conversion, and a violation of the Illinois Forcible Entry and Detainer Act.” *Id.* ¶¶ 5-6. Among the allegations, the tenant asserted that the insureds “knew that he had a valid lease to rent the property but evicted him in July 2010 without providing written notice or filing an eviction complaint pursuant to the Forcible Entry and Detainer Act.” *Id.* ¶ 6.

The insureds turned the tenant’s suit into their business liability insurer, who denied coverage. In the ensuing coverage litigation, the Appellate Court, Second District, determined that the insurer had a duty to defend. First, the appellate court noted that the definition of “personal and advertising injury” explicitly covered “wrongful evictions” and that the “‘plain and ordinary’ meaning of ‘eviction’ is ‘actions taken by landlords with the intent to deprive tenants of their right to occupy or enjoy leased premises.’” *Id.* ¶ 15 (citation omitted). Consequently, “although the policy listed wrongful eviction under the ‘personal and advertising injury’ provision, because the plain and ordinary meaning of ‘eviction’ is to deprive a tenant of the right to enjoy leased premises, . . . the policy provision included coverage for property damage resulting from dispossessing [the tenant] of rental property.” *Id.*

Additionally, the court ruled that the breach of contract exclusion and the policy’s intentional acts exclusion would not apply in this case because the application of the exclusions given the facts of this case would create an ambiguity given the conflict between these exclusions and the express terms of the personal and advertising injury coverage. *Id.* ¶¶ 20-22.

C. Triggering Malicious Prosecution Claims: *St. Paul Fire & Marine Ins. Co v. City of Zion*

In *St. Paul Fire & Marine Ins. Co. v. City of Zion*, 2014 IL App (2d) 131312, the Appellate Court, Second District, analyzed when coverage for a malicious prosecution claim was triggered under a law enforcement liability policy. In *City of Zion*, an insurer provided law enforcement liability coverage to a municipality from 2006 until 2010. This coverage provided that the insurer would “pay amounts any protected person is legally required to pay as damages for covered injury or damage’ that (1) ‘results from law enforcement activities or operations by or for you,’ (2) ‘happens while this agreement is in effect,’ and (3) ‘is caused by a wrongful act that is committed while conducting law enforcement activities or operations.’” *St. Paul*, 2014 IL App (2d) 131312, ¶ 12. The coverage also defined “[i]njury or damage’ as ‘bodily injury, personal injury or property damage’ and defined ‘[p]ersonal injury,’ in pertinent part, as ‘injury *** caused by *** [m]alicious prosecution.’” *Id.*

In *City of Zion*, a plaintiff sued the municipality and its police officers for malicious prosecution for a murder charge brought against the plaintiff in 2005. The prosecution lasted from 2005 until 2010, when the plaintiff was exonerated by DNA evidence. In the ensuing coverage litigation, the insurer asserted that this case did not trigger coverage because the wrongful prosecution was initiated prior to its policy. Conversely, the insured municipality and its officers argued that coverage was triggered by the 2010 exoneration because exoneration is an essential element of malicious prosecution.
In the subsequent coverage litigation, the appellate court agreed with the insurer. While the court noted that exoneration is an essential element of malicious prosecution, it found that, under the language of the insuring agreement, exoneration did not trigger coverage. Rather, “based on the language of the law enforcement liability section of [the insurer’s] policy, the issue this court must resolve is when the ‘injury’ resulting from malicious prosecution ‘happens.’” *Id.* ¶ 23. According to the court, in a malicious prosecution case, the injury “‘flows immediately from the tortious act’ of filing a criminal complaint with malice and without probable cause.” *Id.* As a consequence, coverage was not triggered in this case because, according to the Complaint, the injury occurred in 2005 at the initiation of the prosecution – which was prior to the policy period in the case.

### III. EXCLUSIONS WITHIN POLICIES

#### A. Intentional Act Exclusions and Collateral Estoppel: *Allstate Indem. Co. v. Hieber*

*Allstate Indemnity Co. v. Hieber*, 2014 IL App (1st) 132557, concerned the application of the collateral estoppel doctrine to an intentional acts exclusion. In *Hieber*, the insured was covered under a homeowners policy with the following intentional acts exclusion:

> We do not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, any insured person.

*Hieber*, 2014 IL App (1st) 132557, ¶ 3. The insured and a young woman were socializing at the insured’s home where they drank alcohol, smoked marijuana, and abused prescription drugs. While socializing at the home and while the insured and his guests were intoxicated, he brandished a loaded firearm that he had just purchased. As he was brandishing the firearm and while the young woman was leaving the garage where they were socializing, the firearm discharged, shooting the young woman in the head and eventually killing her. *Id.* ¶¶ 5-7.

The insured was eventually charged with involuntary manslaughter. In Illinois, a “person commits the offense of involuntary manslaughter ‘if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly.’” *Id.* ¶ 8. At his bench trial, the trial judge found the insured guilty of involuntary manslaughter specifically stating that he could “think of few things more reckless, careless, wanton and brazen than *** to take a loaded gun among intoxicated people and start waving it around.” *Id.* The criminal trial court also found that the insured “‘purposely went and got a gun and brought it to a party’ and that ‘he knew at the beginning that he committed an inexcusable act of recklessness causing the death of’” the young woman. *Id.* ¶ 21.
After the insured’s conviction, the young woman’s estate sued him and his parents for negligently handling a firearm and for negligently storing the firearm. The homeowner’s carrier then filed a complaint for declaratory judgment, arguing that the intentional and criminal acts exclusion of its policy precluded coverage. The trial court granted the homeowner’s carrier summary judgment, and the appellate court affirmed.

According to the appellate court, principles of collateral estoppel applied, and the insured’s criminal conviction of involuntary manslaughter was determinative in the coverage action. The court based this finding on a determination that (1) the insured elected to go to trial on the charge of involuntary manslaughter, (2) the judgment in the criminal trial constituted a final determination on the merits, (3) the insured (and, derivatively, the underlying plaintiff) were parties to each proceeding for purposes of collateral estoppel, and (4) the state of mind necessary for the insured’s criminal conviction was the same for the application of the intentional acts exclusion. *Id.* ¶¶ 20-22. The court further found that, irrespective of collateral estoppel issues, the exclusion would still apply because, from an objective standpoint, the woman’s death was the reasonably expected result of the insured’s criminal conduct. *Id.* ¶ 34

### B. The Insured Contract Exception to Contract Exclusions: *Bituminous Cas. Corp. v. Plano Molding Co.*

In *Bituminous Cas. Corp. v. Plano Molding Co.*, 2015 IL App (2d) 140292, the Appellate Court, Second District, interpreted the “insured contract” exception commonly found within exclusions precluding coverage for liability assumed by contract. In *Plano Molding Co.*, the insured was covered by a CGL policy, which excluded coverage for property damage “for which the insured is obligated to pay damages by reason of the assumption of liability in a contract agreement.” *Plano Molding*, 2015 IL App (2d) 140292, ¶ 5. This exclusion, however, contained an exception for an “insured contract,” which was defined as “[t]hat part of any other contract or agreement pertaining to your business *** under which you assume the tort liability of another party to pay for bodily injury or property damage to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.” *Id.*

In *Plano Molding Co.*, the insured was a manufacturer of storage boxes and had ordered two steel injection molds from China for use in its manufacturing process. For the shipment of the steel injection molds from China to the insured’s place of business, the insured was identified as the “consignee” in a bill of lading, wherein the insured warranted within paragraph 10(2) “that the stowage and seals of the containers are safe and proper and suitable for handling and carriage” and agreed to indemnify the “Carrier for any injury, loss or damage caused by breach of this warranty.” *Id.* ¶ 3. During the shipment of the steel injection molds, the molds broke through the floor of the train cars carrying them and caused a train derailment, which resulted in damage to various items being shipped on the train. *Id.* ¶ 4. Pursuant to the bill of lading, the shipper and railroad sued the insured for reimbursement of the claims that they settled for property damage caused to others as well as compensation for their own damages. *Id.* The insured turned this claim into its insurer, who denied coverage.
In the ensuing coverage litigation, the parties agreed that the claim against the insured fell within the purview of the CGL policy’s contract exclusion but disagreed about the potential application of the “insured contract” exception. According to the insured, the bill of lading qualified as an “insured contract,” and thus, coverage existed. The CGL carrier took the opposition position. Relying on the Illinois Supreme Court’s decision in *Virginia Surety Co. v. Northern Insurance Co. of New York*, the court agreed with the CGL carrier’s position. According to the court, the Illinois Supreme Court has made it clear that “a contract in which the insured agrees to indemnify against the insured’s own negligence is not an insured contract.” *Id.* ¶ 15. In this case, the bill of lading only provided indemnification to the railroad and the shipper for the insured’s breach of its warranty that the containers were safe and proper and suitable for handling and carriage. The bill of lading did not provide indemnification for damages caused by the shipper’s and railroad’s negligence. As a result, the bill of lading did not qualify as an “insured contract,” and the contract exclusion precluded coverage. *Id.* ¶¶ 17-20.


In *G.M. Sign, Inc. v. State Farm Fire & Cas. Co.*, 2014 IL App (2d) 130593, the Appellate Court, Second District, determined whether a TCPA exclusion was broad enough to cover a particular claim. In *G.M. Sign, Inc.*, a CGL policy contained the following TCPA exclusion:

This *insurance* does not apply to:

**Bodily injury, property damage, personal injury, or advertising injury arising directly or indirectly out of any action or omission that violates or is alleged to violate:**

a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or

b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or

c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

*G.M. Sign, 2014 IL App (2d) 130593, ¶ 8.* In *G.M. Sign, Inc.*, the insured was sued in a class action for the distribution of unauthorized faxes. The original complaint against the insured contained three counts: a violation of the TCPA, conversion, and consumer fraud, and each count incorporated by reference the TCPA allegations. After the insurer denied coverage and the plaintiff and insured entered into a class action settlement agreement, the plaintiff amended its complaint so that counts II and III of the complaint (conversion and consumer fraud) did not reference or incorporate any paragraphs referring to a violation of the TCPA. At the trial court
level, the plaintiff admitted that the purpose of the amended complaint “was to ‘plead into possible insurance coverage under [the insured’s] insurance policies.’” *Id.* ¶ 12.

In the ensuing complaint for declaratory judgment, the class action plaintiff asserted that the conversion and consumer fraud claims within Amended Complaint raised the potential of coverage, triggering the duty to defend. The appellate court disagreed.

The appellate court noted that the TCPA exclusion contained the phrase “arising out of” which required a “but for” analysis. *Id.* ¶ 29. As such, the appropriate question for the appeal was whether, according to the allegations of the complaint, “but for [the insured’s] alleged act of sending faxes that violated the TCPA, G.M. Sign would have suffered injury.” *Id.* According to the court, the insured’s acts of faxing unsolicited advertisements to unwilling recipients (the essence of the TCPA fax-ad claim) were identical to the acts at the heart of the conversion and consumer fraud claims. *Id.* ¶ 37. As a consequence, the conversion and consumer fraud claims were covered by the TCPA exclusion (despite the lack of explicit references to the TCPA within those counts), and no coverage existed under the Policy.

**IV. CONDITIONS OF POLICIES AND OTHER ISSUES**

**A. Challenging Reasonableness of Settlement Agreements: Central Mut. Ins. Co. v. Tracy’s Treasures, Inc.**

In *Central Mut. Ins. Co. v. Tracy’s Treasures, Inc.*, 2014 IL App (1st) 123339, the Appellate Court, First District, addressed the circumstances in which an insurer can challenge the reasonableness of a settlement agreement between an insured and the underlying plaintiff. In *Tracy’s Treasures, Inc.*, after a conflict of interest arose between the insurer and the insured during a class action against the insured for an alleged violation of the Telephone Consumer Protection Act (TCPA), independent counsel assumed the defense of the insured. *Tracy’s Treasures*, 2014 IL App (1st) 123339, ¶¶ 8-11. After independent counsel assumed the defense, the insured settled the class action without the consent of the insurer. The settlement provided for a $14 million judgment against the insured, but the judgment was only enforceable against the insurer. *Id.* ¶¶ 16-24. In the ensuing coverage litigation, the insurer moved for summary judgment, arguing that the settlement agreement between the insured and insurer was unreasonable as a matter of law. The trial court denied summary judgment.

On appeal, the appellate court affirmed the denial of the insurer’s motion for summary judgment but articulated the principles that would govern the reasonableness proceeding upon remand. According to the court, while an insured can enter into a settlement agreement without the insurer’s consent where the insurer has breached its duty to defend or where a conflict of interest between the insurer and insured exist, the settlement agreement does not bind the insurer unless it is “reasonable.” *Id.* ¶ 44. The reasonableness analysis is broken down into two inquiries. First, “with respect to the insured’s decision to settle, ‘the litmus test must be whether, considering the totality of the circumstances, the insured’s decision “conformed to the standard
of a prudent uninsured.” *Id.* ¶ 56 (citation omitted). Second, “in reference to the amount of the settlement, ‘the test “is what a reasonably prudent person in the position of the [insured] would have settled for on the merits of plaintiff’s claim.”’” *Id.* (citation omitted). This second prong “involves a ‘commonsense consideration of the totality of “facts bearing on the liability and damage aspects of plaintiff’s claim, as well as the risks of going to trial.”’” *Id.* Under both prongs, the underlying plaintiff bears the burden of proving reasonableness, but the insurer is entitled to rebut the showing of reasonableness with its own affirmative evidence. *Id.*

When evaluating whether a “reasonably prudent insured” would have settled, the question “becomes whether the hypothetical defendant would reasonably choose to devote a portion of its assets to litigate (or at least threaten to litigate) certain issues designed to eliminate or, at a minimum, circumscribe its liability for the claims asserted.” *Id.* ¶ 63. Additionally, when conducting this analysis, one “must assume that the defendant is not on the brink of bankruptcy and instead must posit that the uninsured defendant has assets sufficient to satisfy a substantial judgment and that it must weigh whether those assets are best put to use litigating certain issues that could lower the value of the case or whether an early settlement, presumably at a discount, is more advantageous.” *Id.* ¶ 64.

When evaluating the settlement amount is reasonable or collusive, one considers a number of factors, including “the amount of the overall settlement in light of the value of the case, a comparison with awards or verdicts in similar cases involving similar injuries, the facts known to the settling insured at the time of the settlement, the presence of a covenant not to execute as part of the settlement; and the failure of the settling insured to consider viable available defenses.” *Id.* ¶ 81.

Interestingly, the court did not address whether the insurer was entitled to a jury to decide reasonableness issues if requested – which will be an issue for future opinions to decide.


In *Certain Underwriters at Lloyd’s, London v. Central Mut. Ins. Co.*, 2014 IL App (1st) 133145, the Appellate Court, First District, reconciled two other insurance clauses appearing in competing policies. In this case, a general contractor was named as an insured under its own CGL policy and named as an additional insured under a sub-contractor’s CGL policy pursuant to contract. The contract between the general contractor and the sub-contractor did not specify whether the additional coverage would be on a primary or secondary basis. *Lloyds, 2014 IL App (1st) 133145, ¶ 1.*
The general contractor’s CGL policy contained the following “other insurance” clause:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss *** our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. ***

b. Excess Insurance

This insurance is excess over:

***

(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

Id. ¶ 10.

The subcontractor’s CGL policy contained the following “other insurance” clause:

[This insurance] is excess over:

Any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a contract specifically requires that this insurance be either primary or primary and noncontributing. Where required by contract, we will consider any other insurance maintained by the additional insured for injury or damage covered by this endorsement to be excess and noncontributing with the insurance.

Id. ¶ 11.

After an injured construction worker brought a lawsuit against the general contractor, a dispute arose between the contractor’s CGL carrier and subcontractor’s CGL carrier over whose policy was primary.

In the ensuing action for declaratory judgment, the appellate court found that the “other insurance” clause within the subcontractor’s CGL policy rendered it excess to the general contractor’s CGL policy. According to the court, “[t]he majority rule for resolving ‘other
insurance’ disputes is that these provisions should be reconciled whenever possible in order to effectuate the intent of the parties, but that the court cannot arbitrarily pick one policy to be read first and undermine the intention of the insurer whose policy is read second.” *Id.* ¶ 17. In this case, because the contract between the general contractor and subcontractor failed to specify whether the coverage provided by the subcontractor was primary or excess, the condition precedent for rendering the subcontractor’s CGL policy primary was never met, and the “other insurance” clauses of the two policies implicated in this case could be easily reconciled – irrespective of whose policy was read first. *Id.*
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- Partner

Patrick is a member of the firm’s Toxic Torts & Asbestos Practice, and Chair of both the firm’s Insurance Coverage Practice and Class Actions/Mass Torts Practice. Patrick has handled a broad range of litigation, including toxic tort matters, insurance coverage disputes, class action litigation, and products liability lawsuits.

As a member of the firm’s Toxic Torts & Asbestos Practice, Patrick plays a significant role defending clients in asbestos-related products liability and premises liability actions. In asbestos-related products liability and premises liability actions, he has formulated litigation and discovery strategies, supervised day-to-day litigation activities, and deposed numerous plaintiffs, fact witnesses, and experts. He has also successfully argued a variety of briefs, ranging from issues such as the Illinois Frye doctrine, choice-of-law issues, summary judgment matters, and the doctrine of forum non conveniens. Patrick has also been an active member of trial teams when matters move from the pretrial stages to the trial stages.

In addition to playing an important role in the firm’s Toxic Torts & Asbestos Practice, Patrick has handled many insurance coverage cases, prevailing on a number of them through summary judgment proceedings. His advocacy on behalf of the firm’s insurance clients is not limited to pure coverage disputes. Patrick has also successfully defended breach of contract, bad faith, Section 155 actions, and other proceedings ancillary to coverage issues, such as interpleader actions. Patrick has written extensively on insurance coverage matters, including co-authoring a chapter appearing within the Commercial and Professional Liability Insurance Practice Handbook, published by the Illinois Institute for Continuing Legal Education. Patrick is a regular speaker on insurance coverage matters, including speaking at national insurance conferences.

Patrick also defends clients in class action litigation. His experience includes the preparation of briefs at both the trial court and appellate court level, including successfully preserving a dismissal order of consumer fraud claims in a case before the Fifth District Appellate Court of Illinois. He also has taken part in the formulation of discovery plans and defense strategies and taken and defended depositions in class actions cases, including the depositions of named class representatives.

Since 2004, Patrick’s experience has also included handling products liability cases, auto and trucking cases, medical device products liability cases, and construction accident cases.

A native of the St. Louis area, Patrick joined the firm in its Edwardsville office following graduation from law school. He obtained his undergraduate degree from the University of Notre Dame, graduating summa cum laude and being elected to Phi Beta Kappa. He is a Washington University School of Law graduate, being elected to the Order of the Coif upon graduation. He was named a Super Lawyer Rising Star – Illinois (2012-2015), and is a graduate of the International Association of Defense Counsel Trial Academy.

Significant Cases
- Rix v. Heartland Regional Medical Center-No. 5-07-0006 (5th Dist. 2008), Affirmation of dismissal of class action claim brought pursuant to the Illinois Consumer Fraud Act regarding hospital pricing of services provided to uninsured patients.

Publications

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- “Handling Insurance Coverage Disputes”
  Moderator, Illinois Institute for Continuing
  Legal Education, Bloomington, Illinois (2014)
- “Insurance Coverage Update”
  Heyl Royster’s 29th Annual Claims Handling
  Seminar (2014)
- “Insurance Coverage Update”
  Heyl Royster’s 28th Annual Claims Handling
  Seminar (2013)
- “Personal Auto Policy: The Fundamentals”
  PLRB/LIRB Claims Conference & Insurance
  Services Expo, Orlando, Florida (2012)

Professional Recognition

- Named one of “40 Under Forty” attorneys to
  watch in Illinois by the Law Bulletin Publishing
  Company. This honor recognizes exceptional
  lawyering skills, significant contributions to the
  legal profession and substantial involvement in
  local community.
- Named to the Illinois Super Lawyers Rising Stars
  list (2012-2015). The Super Lawyers Rising Stars
  selection process is based on peer recognition
  and professional achievement. Only 2.5 percent
  of Illinois lawyers under the age of 40 or who
  have been practicing 10 years or less earn this
  designation.

Professional Associations

- Defense Research Institute
- Illinois State Bar Association
- Madison County Bar Association
- Illinois Association of Defense Trial Counsel

Court Admissions

- State Courts of Illinois and Missouri
- United States District Court, Central and
  Southern Districts of Illinois
- United States Court of Appeals, Eighth Circuit

Education

- Juris Doctor (Order of the Coif), Washington
  University School of Law, 2004
- Bachelor of Arts-Economics (summa cum
  laude), University of Notre Dame, 2001