COZEN O'CONNOR

SUMMER 2008

SUBROGATION AND RECOVERY OBSERVER

NEWS ON CONTEMPORARY ISSUES

MESSAGE FROM THE CHAIR

TO THE FRIENDS OF COZEN O'CONNOR:

In recent years, we have combined sports and subrogation by holding multi-company educational seminars in ballparks located in many of our 21 U.S. offices. Both the baseball season, as well as Cozen O'Connor's sports and subrogation season, are well underway. Please be certain to check our website for upcoming events, or e-mail us or any of our subrogation attorneys to request an invitation or copies of our educational materials. They include regional updates on case law and statutory developments in many important subjects affecting the subrogation and recovery industry.

2008 has been extremely busy for Cozen O'Connor's Subrogation Department, and we very much appreciate your continued confidence in us. The enclosed Observer summarizes some of our more recent successes on your behalves, including a number of favorable trial verdicts, substantial settlements, and appellate victories.

As always, we continue to grow, and we also are pleased to announce the addition of six new lawyers, with further growth expected for the balance of the year in several of our national and international offices.

Please accept our best wishes for an enjoyable summer, and don't hesitate to let us know how we can be of further assistance to your companies in the enhancement of your subrogation and recovery programs.

Very truly yours,

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SPOTLIGHT ON….OPERATION GOLD®


Matt Noone

Matt Noone of our Philadelphia Office in the Atlantic Region recently recovered $250,000 for our client DiscoverRe in an Operation Gold file. As many of you are aware, our firm performs "Operation Gold®" file reviews of closed files and pending claims that had not been carefully screened for subrogation potential in an attempt to find some golden nuggets among the rocks. Matt recently settled a claim that was discovered during an Operation Gold® review for DiscoverRe.

The claim involved a fire that occurred in the cockloft of a delicatessen where a heater had been installed. The original origin and cause expert hypothesized that the fire was caused by radiant heat from the exhaust elbow that ignited surrounding combustibles. The expert claimed that the elbow had somehow become separated before the fire, which enabled the exhaust heat to ignite the surrounding wood. However, when Matt called and questioned him, the expert admitted that he had no proof that the exhaust duct was separated, and he also admitted that he did not know the exhaust temperature of the heater. Matt quickly realized that the expert was overmatched.

After some independent, technical research on his own, Matt determined that the exhaust temperature from a properly operating heater of 400° Fahrenheit was insufficient to auto-ignite wood which required a temperature between 650° and 700° Fahrenheit. Matt therefore deducted that there must have been a problem with the heater. However, the heater had been discarded after the fire so there was no way we could inspect the heater to ascertain the nature of the suspected defect.

Matt's legal research showed that the lease imposed the obligation for maintenance of the heater on the tenant. Matt therefore filed suit on this basis against the tenant. During depositions, we established that the tenant had performed no preventive maintenance on the heater in the fourteen years that the tenant had leased the premises. In fact, he had done nothing to the heater, other than change the filters at the start of every heating season. Matt obtained a copy of the heater manufacturer's owner's manual stating that the owner should have the heater serviced once a year by a professional technician.

Matt also retained a new expert who developed a theory that explained how the heater started the fire. Specifically, the theory was that the accumulation of dirt and debris blocked the air/gas mixing chamber, causing a diffusion flame. A diffusion flame is a very wild, violent flame that can extend up to two feet in height, as opposed to the two-inch blue flame of a properly operating natural gas heater. The theory was that the diffusion flame entered the exhaust elbow duct and ignited wood nailing strips that were located in almost direct contact with the exhaust duct. The placement of the wood nailing strips was in violation of code mandated clearances away from the heater. Matt also retained a property management expert who opined that the clearance problem would have been discovered if the tenant had secured the annual service contract that he was required to obtain according to the lease.

"Following discovery and production of our expert reports, defense counsel changed his tune and agreed to mediate and thereafter ended up paying 80% of the recoverable damages."

Defense counsel initially stated that the pipe separation was caused by unidentified persons working on the roof of the building a week before the fire. Defense counsel advised that his insurance carrier saw no liability on the tenant's part and refused to go to mediation. Following discovery and production of our expert reports, defense counsel changed his tune and agreed to mediate and thereafter ended up paying 80% of the recoverable damages. Nice work by Matt on a claim that had been closed without pursuing subrogation initially and a testament to the success of Operation Gold®. ■

TRIAL AND ARBITRATION VICTORIES


Paul Bartolacci

SPREADING THE NEWS….

Paul Bartolacci of our Philadelphia Office in our Atlantic Region received a plaintiff's verdict in the amount of $1.5 million last fall in the Court of Common Pleas of Lucas County, Ohio. Following a three-day jury trial, the jury awarded 100% of the damages that Paul sought at trial.

The case arose from a January 2006 fire at the industrial warehousing facility of Biniker Builders which was insured by Ohio Casualty. Beth Steele handled the file for Ohio Casualty. The fire started in a space occupied by a tenant. The tenant, D&J Manufacturing Company, manufactures car air fresheners and incense. We filed suit against D&J Manufacturing alleging that the flammable liquids used in the manufacturing process were not properly isolated from numerous potential ignition sources in the leased space and eventually lead to the fire.

"The jury rewarded Ohio Casualty with a 100% verdict, finding that the defendant was…grossly negligent."

Paul also argued that poor housekeeping and maintenance caused the fire to spread out of control, which destroyed the building. The defense raised a waiver of subrogation argument in a motion for summary judgment that Paul defeated by claiming that the defendant's code violations, gross negligence, and willful misconduct precluded enforcement of the waiver. The Court also accepted our argument that even if the waiver applied it did not extend to damages to the building not subject to the written lease between the landlord and the defendant. Without the waiver defense at trial, the defendant then contended that we could not meet our burden of proof because our experts could not identify a specific ignition source. Defense counsel also asserted that a key fact witness, a former employee of the defendant, was not credible and essentially made up a story surrounding the fire because he was "disgruntled". Defense counsel also challenged the damage amount by presenting its own expert testimony on damages. The defendant never offered more than $400,000 prior to trial. The jury saw through the attempts to deflect blame and rewarded Ohio Casualty with a 100% verdict, finding that the defendant was not only negligent but answering special interrogatories and concluding it was grossly negligent, reckless, acted with willful and wanton misconduct and violated applicable fire safety codes.


Kevin Caraher

STOLEN CAR + ARSON = RECOVERY

Kevin Caraher of our Chicago Office in the Midwest Region obtained a verdict in May 2008 on behalf of Fireman's Fund Insurance Company in a very difficult case involving an arson fire. An unknown individual stole a car, went for a joyride, and eventually left it in the shipping area of an industrial building in Chicago. He then set the car on fire to hide evidence or simply for the thrill of it. The fire spread to a wooden loading dock door and then spread throughout the building, eventually igniting an adjacent building owned by our client's insured. The fire wound up being one of the largest fires in Chicago since the famous McCormick Place Convention Center fire in 1967. The Chicago Fire Department response involved more than 100 vehicles and 250 firefighters. The investigation into the cause and spread of the fire identified deficiencies in the size of the sprinkler system piping for the building that initially caught fire, as well as with the valves for the sprinkler system. There was also some evidence that our insured had failed to properly maintain its sprinkler system which defense counsel attempted to use at trial.

We brought suit against the owner and tenant of the building which had caught fire from the burning car. Notwithstanding some very serious liability issues, as well as questions regarding our insured's property and business interruption losses due to an unconventional bookkeeping system, Kevin prevailed after a three-week jury trial.

The jury found the tenant of the building that initially caught fire liable and did not find any comparative negligence on the part of our insured. The total claimed damages were approximately $4.2 million and the jury awarded slightly in excess of $3.3 million. An excess carrier was also involved in the case, represented by separate counsel, but the FFIC portion of the recovery was approximately 43%.


Jack Slavik

PULLING AN ARBITRATION OUT OF A HAT

Jack Slavik of our Seattle Office in the Northwest Region recently won a private arbitration against Bunn-O-Matic, a manufacturer of coffeemakers in *Allstate Indemnity Insurance Co. v. Bunn-O-Matic Corp.* The case involved a residential fire caused by an eight-year old coffeemaker that failed due to water leaking into the electronics compartment. Unfortunately, the damage was so severe that our experts could never specifically identify the component that caused the fire. In addition, approximately one year before the fire, the insured noticed that the product was leaking and attempted to repair the leak himself. The insured then skipped his first deposition and, when he did finally attend, testified in detail about his recent two year prison term and other domestic problems. He also failed to attend the arbitration despite a valid subpoena.

Just in case Jack did not have enough hurdles to overcome, the original expert had a breakdown, quit the business, and refused to testify at deposition or at the arbitration. Not surprisingly, Bunn-O-Matic's top offer was $10,000 before the arbitration. Undaunted, Jack prevailed at the arbitration and received a 100% award. ■

APPELLATE VICTORIES


Marty Duffey

A *PRO BONO* VICTORY IN IMMIGRATION LAW

Last fall, the United States Court of Appeals for the Third Circuit issued an important precedential decision regarding an asylum claim by a young man whose life was threatened when he refused to join a gang in Honduras. Marty Duffey of our Philadelphia Office in the Atlantic Region handled the case *pro bono* along with Mark Dugan of our Corporate Department in his appeal to the Third Circuit. Marty and Mark were provided terrific assistance by Iayodele Gansallo of the Hebrew Immigration Aid Society.

Our client, Mauricio Valdiviezo Galdamez, is a citizen of Honduras. Galdamez fled Honduras when members of a gang called "Mara Salvatrucha" threatened to kill him if he did not join the gang. The Mara Salvatrucha is a well-known gang in Latin America and is involved with, among other thing, drug trafficking and murder. On multiple occasions, the gang members verbally threatened Galdamez, beat him and robbed him. Each time, Galdamez reported the attacks to the police but nothing was ever done. Not wanting to join the gang, but fearing for his life if he did not, he fled to the United States in October 2004.

Galdamez sought asylum, withholding of removal and relief under the Convention Against Torture. An evidentiary hearing was held before the Immigration Judge (IJ) who denied Galdemez's application and ordered that he be removed from the United States. Although the IJ found no reason to question Galdemez's credibility, she denied his application for three reasons. First, she found that he failed to prove that the Honduran Government "refused" to protect him from attacks by the gang. Second, she found that he failed to show that his injuries were sustained "on account of" one of the five grounds recognized by the Immigration and Nationality Act (i.e.: race, religion, nationality, membership in a particular social group or political opinion). Last, she found that he failed to prove that he had a well founded fear of persecution "countrywide." The IJ's decision was affirmed, without opinion, by the Board of Immigration Appeals (BIA).

"The opinion is significant not only to Mr. Galdamez, but also because it will be relied upon by others who seek asylum in the United States..."

Marty filed the Petition for Review to the Third Circuit and argued before the Court. He argued that Galdamez should have been granted asylum by reason of being persecuted for

his membership in a particular social group; namely, young Honduran men who have been actively recruited by gangs but who have refused to join because they oppose these gangs. No such group has been previously recognized by any federal court or by the BIA. Marty argued that the IJ erred by failing to decide whether this proposed group constituted a "particular social group" within the meaning of the Act. He further argued that the IJ erred by requiring Galdamez to prove that the government "refused" to protect him when the law only required him to prove that the government was "unable or unwilling" to do so. Finally, Marty argued that the IJ erred by failing to extend to Galdamez the legal presumption of future countrywide persecution based upon the past persecution he had already suffered.

The Third Circuit issued a 19-page opinion vacating the IJ's decision in its entirety and remanded the case to the agency for "further proceedings consistent with its opinion." Although the Court declined to decide the question of whether Galdamez's proposed group constitutes a "particular social group" before the BIA had the opportunity to address the question, the Court made its position clear by stating, "The group in which Mr. Galdamez claims membership shares the characteristics of other groups that the BIA has found to constitute a "'particular social group.'"

The opinion is significant not only to Mr. Galdamez, but also because it will be relied upon by others who seek asylum in the United States in order to avoid persecution for refusal to join in criminal gangs. This was a wonderful appellate victory lead by a subrogation lawyer arguing immigration law. ■


Tom Dunford

ROCKY MOUNTAIN HIGH

Tom Dunford of our Denver Office in the Rocky Mountain Region also received a significant appellate victory last fall. The details of Tom's trial victory were in a previous issue of the *Subrogation and Recovery Observer*. The Colorado Court of Appeals, in a published opinion, affirmed the trial court award on behalf of Farmland Mutual Insurance of the Nationwide Agri Group. A copy of the opinion is available upon request.

Farmland's insured, Onion Growers, Inc., operated a crop storage and drying facility and hired a contractor to install a crop drying heater manufactured by defendant, Chief Industries, Inc. In September 2003, a fire caused extensive damage to the facility. Farmland paid Onion Growers $617,625.77 pursuant to its insurance policy and brought the subrogation action tried by Tom alleging that the drying unit was negligent in design, as manufactured, and as installed.

Tom had presented four expert witnesses at trial, including Toby Nelson, a forensic mechanical engineer. Mr. Nelson testified that the fire would not have occurred if a fuel line strainer to prevent debris buildup had been installed in the dryer. Although Mr. Nelson did not find any debris in the portion of the fuel line that would have obstructed a valve, he postulated that any debris was likely expelled when the fire department and gas company energized the system during their respective investigations. Tom also presented evidence at trial that Chief's instruction manual accompanying the heater advised that an installer should acquire and attach a strainer.

On appeal, Chief argued that the trial court abused its discretion in admitting the expert witness testimony of Mr. Nelson. Chief claimed the testimony was not reliable because it was not based upon reliable scientific principles and he had never worked in the crop drying industry. Chief attacked the process of elimination used by Mr. Nelson and contended it was not a reliable scientific method. The Colorado Court of Appeals determined that NFPA 921 itself refers to the process of elimination as an acceptable investigative technique. The Court also determined that testing was not a prerequisite to admissibility. Chief also challenged the testimony since no testing had been performed but the Court found such testing, or lack of it, was properly the subject of cross examination not preclusion. Chief's other arguments were also rejected and the jury's award affirmed. Dave Fortenberry of Farmland was delighted because he adjusted the loss, sat through trial, and testified on damages. ■

NOTABLE SETTLEMENTS

TRANSFORMING RECOVERY


Gerard Harney


Howard Maycon

Gerard Harney and Howard Maycon of our West Region teamed up to recover $2.75 million from the Los Angeles Department of Water & Power (LADWP) on a toxic contamination loss involving a failed transformer. AIG and AWAC insured a Washington Mutual Bank branch in Hollywood, California. Jim Winters handled the claim for AIG's recovery arm and Sue Jarrell for AWAC. The loss occurred when a failed underground transformer owned and operated by LADWP allegedly caught fire and released PCBs into the bank. Washington Mutual incurred significant clean-up costs and business interruption loss during the one-year period of remediation due to the well-known environmental and health hazards of PCBs.

In its defense, LADWP's primary arguments were that there was no evidence the transformer had caught fire; the event took place across the street from the bank and the PCBs could not have traveled the distance necessary to have entered the bank; the PCBs found in the bank were background level at best; and the specific types of PCBs (Aroclors) from the transformer vault did not match those of the PCBs in the bank. In addition, LADWP also raised comparative fault issues, contending that AIG's insured had negligently kept the HVAC system running for a period following the loss, thereby circulating any PCBs which may have entered the bank as a result of the incident.

The case was vigorously defended and the excellent result was concluded at a hotly contested mediation presided over by a retired Los Angeles County Superior Court Judge. A significant factor was our ability to recover substantial attorney's fees and expert costs under inverse condemnation, one of the primary theories advanced by us. ■

THE FIRE STOPS HERE


Mike McKenzie

Mike McKenzie of our Southeast Regional Office recovered $1.3 million on a claim involving over $2,000,000 in damage for Travelers.

The case arose from a fire at the insured's apartment complex, which started on an exterior second story balcony due to the negligence of an uninsured tenant who carelessly discarded a cigarette into a plastic container. The fire spread along the exterior of the building and into the attic. The local building code required installation of draftstopping to protect the attic space by compartmentalization. The contractor had installed this, but did so in such a way as to fail to properly secure the material. Mike therefore alleged improper installation which caused the fire to spread quickly throughout the attic, thereby destroying the upper floors of about one-half of the building. In particular, Mike contended that the contractor failed to properly affix and nail the material in such a way as to prevent the spread of hot gases.

Fortunately, the fire was stopped by a concrete block fire wall and never reached the other half of the building. The remaining half of the building provided us with the circumstantial evidence we needed to prove that the contractor had negligently installed the draftstopping. Because of the size of the fire when it entered the attic space (as captured by a news helicopter flying overhead), questions arose whether even properly installed draftstopping would have slowed the hot gases sufficiently to allow the fire department to contain the blaze. Extensive fire modeling by our experts proved to be very helpful at the mediation to demonstrate the scientific basis for our case. ■

RUNAWAY TRACTOR


Jeff Calabrese

Jeff Calabrese of our Chicago Office in the Midwest Region obtained an impressive settlement on behalf of Carmen Ruble and Foremost in a case involving very strange and tragic facts. Our client insured a car dealership which sustained approximately $137,000 in damages when a tractor trailer ran off the road into its parking lot, smashing a number of recreation vehicles. The truck driver had suffered a heart attack while driving and later passed away in the hospital.

The company that employed the truck driver was essentially just the driver and his wife. The driver was hauling a load for another company insured by the same liability insurer. Jeff contacted the liability insurance carrier in an effort to get the case resolved pre-suit. Jeff's efforts were rebuffed.

After discussing the matter with Foremost, Jeff agreed to reduce the claim to the $100,000 maximum for inter-company arbitration to which the liability carriers belonged. In preparing the arbitration contentions, Jeff's research uncovered a number of statutory provisions, including sections of the Federal Motor Carrier Safety Regulations, which had been adopted by statute in Nebraska. These regulations provided, among other things, that motor carriers have a duty to establish minimum qualifications for their drivers, and that the carrier ensure that a driver is physically qualified with no current diagnosis of cardiovascular disease. Through pre-suit discovery, we learned that the truck driver had had a long history of heart disease.

On the eve of submitting its response to the arbitration, a representative of the liability carrier called to settle the case. The case was eventually settled for $130,000, $30,000 above the maximum that could have been recovered in inter-company arbitration. A job well done by Jeff in a very unique and tragic case. ■

"The case was eventually settled for $130,000, $30,000 above the maximum that could have been recovered in inter-company arbitration."

Howard Maycon

LIMITED RECOVERY STILL A PLUS

Howard Maycon of our Los Angeles Office in the West Region settled a claim last fall for Dave Beck of Federal Insurance Company. The insured owned and operated a luggage import and sales company in Los Angeles, California. A large fire resulted in tremendous destruction to the premises. The fire consumed an entire warehouse and heat and smoke penetrated into the adjoining structures which set off sprinklers causing significant damage to the building and contents. Federal paid in excess of $1.35 million as a result of the fire.

Neither the public nor private cause and origin investigators could determine the cause of the fire due to the extent of destruction. In fact, arson could not be ruled out as a cause. Based on the same, another law firm turned down the case.

Our investigation revealed that the building in which the fire started had sprinklers; however, they failed to activate during the fire. Further analysis revealed that the main sprinkler valve was locked in the "off" position such that the system was never in a position to activate at the time of the fire. The main sprinkler valve was located in an alcove that was secured by a lock. The valve itself was secured by a chain that was padlocked. The insured denied having keys to the alcove, lock or padlock. The insured stated that its fire sprinkler system maintenance company had possession of the keys and the maintenance company last serviced and certified the system in May 2005, seven months before the fire.

An engineering consultant retained by Federal determined that the sprinkler valve was rusted shut in the "off" position, with three-quarters inch of corrosion built up on the outside of the valve. That amount of corrosion was consistent with the valve being in the "off" position for at least six months before the fire, when the maintenance company last performed service on the system. Had the valve been turned off by the insured or someone else immediately before the fire, there would not have been enough time for enough corrosion to occur such that the valve would be frozen in the "off" position.

Based upon the above information, Howard filed suit against the fire sprinkler system maintenance company. We alleged that the maintenance company failed to turn the valve to the "on" position following the inspection certification of May 2005. The owner of the maintenance company, naturally, testified that when his company left the valve was in the "on" position and that the chain and padlock around it were used to secure it in that position. The owner further testified that he left the key to the padlock with the insured, which the insured denied.

The defendant raised the doctrine of superior equities as a defense but following the taking of depositions, a policy limit demand of $1,000,000 was sent. We eventually obtained the $1,000,000 policy limit on behalf of Federal. ■


Mike McKenzie


Karen Fultz

NO BARRIER TO RECOVERY

Mike McKenzie and Karen Fultz of our Atlanta Office in our Southeast Region also successfully settled a fire spread claim for Jay Davenport of Travelers. The insured was a metal manufacturer in Loudon, Tennessee. In 2000, the insured entered into a contract for the construction of a metal building and requested the installation of insulation. The builder recommended a reflective foil insulation manufactured by Environmentally Safe Products.

In February 2004, a fire erupted inside the metal building and destroyed the structure and most of its contents. The experts were, unfortunately, not able to determine the exact cause of the fire, but they opined that the majority of the fire damage to the building was caused by the rapid spread of the fire when the wall insulation was ignited.

Mike and Karen filed suit against the installation contractor, the distributor of the insulation, and the manufacturer of the insulation. We alleged that the manufacturer misled its consumers by advertising its product as a Class A material and failed to warn that it needed to be covered by a thermal barrier after installation. Our investigation revealed that the product's fire spread rating did not meet the requirements of Class A materials, as defined by the building code, and that the manufacturer failed to test the product in a configuration consistent with how the product was actually used by the consumer.

Karen and Mike determined that, without the thermal barrier, the insulation burned as rapidly as gasoline. Karen and Mike were able to obtain the manufacturer's $1,000,000 policy limits, as well as an additional contribution from the distributor. ■


Marty Duffey

TOO CLOSE FOR COMFORT… OR SAFETY

Marty Duffey of our Philadelphia Office in the Atlantic Region recently obtained a hard fought settlement for the Ohio Casualty Group for a fire in a warehouse. OCG insured the owner of the warehouse who leased it to a foreign company. The fire was apparently caused by an unknown malfunction of the building's electric service panel. The fire severely damaged the building and destroyed the tenant's contents. Marty developed a theory that the fire was caused and allowed to spread by the tenant storing its materials too close to the electrical panel in violation of code. The tenant, not surprisingly, denied storing materials anywhere near the electric panel and counter-claimed that the landlord was negligent for improper maintenance of the electrical system. The tenant's subrogation claim was $450,000 and the tenant also claimed to have between $600,000 and $800,000 in uninsured losses.

Marty was successful in settling the subrogation claim on behalf of OCG for $318,420. OCG was delighted with the result of both subrogation claim and the claim filed against OCG's insured, which was settled by defense counsel for $55,000. ■


John Flaherty

DAMAGE CONTROL

John Flaherty of our Chicago office in our Midwest Region obtained an outstanding 100% recovery for Farmer's Insurance recently. Farmer's insured Koja, Inc. d/b/a Luca's Coney Island Restaurant in Ypsilanti, Michigan. On June 12, 2006, the restaurant was closed for renovations when a fire broke out in the kitchen ceiling. Defendant, Denny's Heating, Cooling and Refrigeration, was hired to improve exhaust capabilities of the exhaust hood protecting the cook line. Denny's was welding a new large vertical exhaust vent into place after having removed the old one. The employees welded two or three sides of the vent into place and then left for lunch. While the workmen were eating lunch in a restaurant across the parking lot, they noticed smoke coming from the roof and rafters. The fire department had a difficult time extinguishing the fire because it was in the void space between the kitchen ceiling and roof deck.

Our client, Farmer's, paid policy limits on the building and contents in the amount of $450,000 and business interruption of $211,000. Despite the strong liability case, there was no meaningful pre-suit offer and John filed suit against Denny's and commenced discovery. During depositions, the defendant's workmen admitted that they were welding in the area of origin, that their welding activity was burning and igniting grease that was present on top of the hood, and that they could not see the area around the exhaust vent in the void space between the ceiling and roof deck. John was able to get the workman who was doing the welding on the day

of the fire to admit that his welding activity was most likely the cause of the fire. The local fire investigator also opined that the fire was caused by welding. The defendant eventually stipulated to liability.

Nevertheless, defendant vigorously contested the damages, primarily the business interruption claim. Defendant's accountant testified at his deposition that the business interruption claim was overstated because there was no proof that the insured actually paid the continuing expenses during the time the business was closed; therefore, since the insured did not pay the continuing expenses, it did not incur a loss. The defendant's accountant admitted in his deposition that the continuing expenses were based on legal or contractual obligations that were due and owing regardless of business operations. The accountant admitted that he did not calculate an alternative business interruption claim amount.

The case went to Michigan's Mandatory Case Evaluation Conference, where the case is evaluated by three Michigan attorneys. A party has thirty days after an award to accept or reject the award. If an award is rejected, the party rejecting it must recover at least 10% more than the award or face mandatory imposition of costs and attorneys fees. The three attorneys evaluating the case agreed with John and concluded that the continuing expenses were a proper element of business interruption no matter if the expenses were paid or not. The Case Evaluation Conference awarded Farmer's 100% of its damages. Defendant, thereafter, capitulated and Farmer's received a 100% recovery of $661,000.00. ■


Peter Rossi

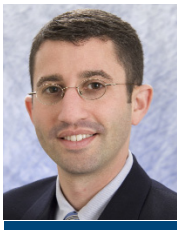
FIRE ON THE LINE

Peter Rossi of our Philadelphia Office in the Atlantic Region obtained a hard-fought settlement of $1.5 million on behalf of Ohio Casualty after almost one week of trial in the United States District Court for the Northern District of New York.

The case resulted from an August 2005 fire at a manufacturing facility of the insured, Keymark Corporation, in Upstate New York. Keymark manufactures extruded aluminum window products. Part of the manufacturing process includes a spray paint line comprised of four paint booths that apply highly combustible coatings and solvents. Keymark hired Sanders Fire Protection to install a carbon dioxide fire suppression system to protect the paint line and booths. Sanders completed the installation except for connecting the automatic shut down of air exhaust and intake equipment. Under the contract documents exchanged between the parties, Keymark was responsible to have its in-house electrician install the necessary air intake/exhaust shutdowns.

Eighteen months after the system was installed, Keymark employees accidentally started a fire on the paint line. Although the fire suppression system was manually activated, the shutdowns were not installed and the air intake/exhaust equipment continued to operate which resulted in the expulsion of the carbon dioxide and intake of oxygen to fuel the fire. As a result, the fire spread throughout the plant and Keymark sustained $3,000,000 in damages. During the trial, Keymark employees testified that they did not recall receiving any warnings about the air intake/exhaust shutdowns, and did not know that the failure to install the shutdowns could prevent the fire protection system from properly operating. Although the Keymark employees delayed almost an hour before calling the fire department, Peter's experts testified that had the fire protection system worked as designed, the fast-spreading fire would have been extinguished with very little damage. Peter was able to keep the fact that Keymark employees caused the fire from the jury by way of a Motion in Limine. The court agreed that the defense expert could not testify regarding the insured's negligent conduct in starting the fire in a case where the spread of the fire was at issue.

Just before the case was to go to the jury, defense counsel and defendant met our demand of $1.5 million. ■


Joshua Goodman


Peter Asmer

HURRICANE RELIEF

Joshua Goodman and Peter Asmer of our Charlotte office in our Southeast Region along with Dan Durbin and Susan Smith of RSUI achieved a significant recovery involving two hurricane losses in Florida that struck the same area within one month.

The case arose from the failure of a roofing system on a shopping mall in Palm Beach, Florida. We alleged the roofing system was defective at the time it was manufactured and also that the roof was negligently constructed by a roofing subcontractor in direct violation of the express requirements of the Building Code.

In 1989, the roofing manufacturer designed, manufactured, and sold the roofing system for the shopping mall during its original construction. RSUI's insured experienced repeated leaks in the original roof. In 2000, the leaks continued and RSUI's insured advised the manufacturer that it needed to replace the roof. In response, and after much negotiation, the manufacturer agreed to provide a new roofing system and hire, oversee, and manage an authorized, approved, trained, and licensed roofer.

In September of 2000, the manufacturer hired a roofer to construct and install the replacement roofing system on the shopping mall using the manufacturer's approved methodologies and materials and in accordance with applicable building codes, laws, regulations, ordinances and industry standards.

During a hurricane on September 4, 2004 and another on September 25, 2004, the replacement roof failed and came loose from the shopping mall at less than the required building code minimum uplift resistance wind loads allowing water to intrude into the mall. A number of other parts of the building failed allowing water to infiltrate the mall. Defense

"...successfully negotiated a joint prosecution agreement between the carriers...recovering $1,250,000 in a case involving damage from two hurricanes..."

counsel raised this issue, and various other defenses, throughout the case. The water infiltration caused $9,637,929.01 in damages to the roof, interior, contents, and business interests.

The insured had a primary policy of insurance with another carrier and a wind deductible buy-back policy with RSUI. RSUI paid $3,280,000, the insured sustained a deductible loss of $100,000, and the other carrier paid the remaining $6+ million. The only viable subrogation claim was against the installer of the roof and the manufacturer of the roof components. The other carrier was proceeding with its action separately when we filed a Motion to Intervene on behalf of RSUI. The insurance policies provided that the other carrier had the right of first recovery. After a year of research and negotiation, we were able to convince the other carrier, and its counsel, that RSUI had a viable argument to obtain a share of any recovery considering the unique nature of the policies. We thereafter successfully negotiated a joint prosecution agreement between the carriers. Josh, Pete, Susan, and Dan were successful in recovering $1,250,000 in a case involving damage from two hurricanes and insurance policy provisions providing the right of first recovery to the other insurer. Truly a Herculean effort in a hurricane case. ■


Brett Rideout


Vince McGuiness

FIRE IN THE NORTH

Brett Rideout of our Toronto, Canada Office, with valuable assistance from Vince McGuiness of Philadelphia, recently achieved a significant recovery for our client American International Recovery, the recovery arm of AIG, on a fire loss in Sudbury, Ontario.

The insured owned two highly sophisticated rail line test vehicles which were delivered to a center in Sudbury for repairs. While the vehicles were in the care and custody of the repair center, a fire started burning the building to the ground along with most of the vehicles inside.

In the Statement of Claim, we pleaded that the owners of the repair center were strictly liable as they were a "bailee for hire" and had care, custody and control of the insured's vehicles at the time of the fire. The repair center denied liability for the loss.

In addition to the repair center, we also named several construction companies in the suit as our investigation revealed that the cause of the fire was improper use of a propane "tiger torch" during construction. However, there were significant issues with respect to which company was actually using the torch at the time of the fire.

The action involved multiple defendants who all pointed the finger at one another. Typically the action would have proceeded through a lengthy discovery process and may have taken years to reach trial. However, Brett was able to

negotiate a settlement with the repair center whereby they paid damages of $475,000 while proceeding with the liability case against the remaining defendants. This insured a speedy and substantial settlement for our client.


Kevin Caraher


Dan Harrington

BLOOD MONEY

Kevin Caraher of our Chicago Office and Dan Harrington of our Philadelphia Office joined together to handle an interesting and complex claim on behalf of AIG and AWAC which settled in June for a confidential sum. The claim involved dried animal blood plasma, used for animal feed, which was damaged by fire and water following the failure of a metal halide lamp in an open fixture in a leased warehouse at the Ames, Iowa Airport. The defendants raised significant issues regarding the extent of smoke damage to the product, for which creative evidence was presented. Although 8,000,000 pounds of plasma was affected in the warehouse, only about 650,000 pounds were directly damaged by fire or by water; the balance consisted of smoke damage to packaging in varying degrees.

Kevin and Dan sued the fixture manufacturer, the lamp manufacturer and landlord. The defendants asserted that our insured, the tenant that made the plasma, was at fault in failing to have maintained the lighting system properly and in storing combustible materials directly under the light fixture.

Following completion of discovery, and following extensive arguments on pending motions for summary judgment, the case settled at a mediation, which took place in the midst of the extensive flooding in Iowa. The flooding forced a last-minute change in the site of the mediation.


Christian Kelly

WHERE THERE'S RUST, THERE'S BRASS

Christian Kelly of our London Office acted for two separate insurers in respect of an escape of water claim and made a recovery of £103,000.

The insured, a high class tailors and legal outfitters, had an escape of water from their heating system at their head office. They had cover under three separate policies - a buildings policy, a contents policy and a plant and machinery policy, all with separate insurers. Cozen O'Connor gained the recovery instruction from Chubb Insurance of Europe SA ("Chubb"), who were the contents insurers. We offered to act for the other two insurers on the same terms as for Chubb.

HSB Engineering Ltd ("HSB") insured the plant and machinery and opted to instruct us. The insurers of the buildings policy declined the invitation and opted to pursue their own recovery.

The facts concerned a service provider who had provided over a course of some years a water treatment program for the heating system to guard against rust and corrosion. The service provider failed to correctly service the system and so over a period of time the radiators began to corrode. Following an escape of water, the other radiators were tested and corrosion was found throughout the whole of the heating system.

Experts argued over causation. The lawyers argued over liability and issues of responsibility under the contracts.

Settlement was ultimately reached before litigation commenced. A recovery worth 80% of the quantum and 70% of the fees incurred was received for Chubb and HSB. Both Chubb and HSB were pleased with the level of recovery since there were issues of quantum which could have been attacked had the matter proceeded to trial.

A £103,000 settlement was reached worth 80% of the quantum and 70% of the fees incurred on behalf of two separate insurers.

Sadly for the building's insurers, the last that Cozen O'Connor had heard from the broker was that they had yet to commence any recovery action.

WELCOME BACK


Peter Lynch

Cozen O'Connor welcomes back Peter Lynch to our San Diego Office of our West Regional Office. For the last ten months, Lt. Colonial Peter Lynch had been stationed in Iraq with the United States Marine Corps as a Deputy Rule of Law Officer. Peter previously was in the Marine Corps Reserves until being called back to active duty for a ten-month deployment with an artillery unit that began in March 2007. Peter was responsible for helping to revive the collapsed court system in Fallujah, Ramadi and other cities in Anbar Province. Peter also led 63 combat missions in Fallujah and conducted counter insurgency operations. The area of the country where he was assigned was extremely dangerous.

Peter was awarded the Bronze Star for his work in Iraq in helping to re-establish the court system that has recently heard over 600 cases. A part of the Marine Corps award citation for his work stated that Peter's "outstanding results sent a clear message to insurgents that they would be held accountable for their actions and bolstered the Iraqi police's confidence in their ability to manager terrorism cases."

We are thankful for Peter's safe return and his personal and professional sacrifices on behalf of our country. ■

WELCOME ABOARD!

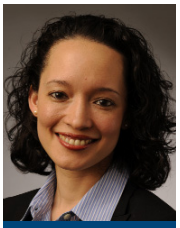
The following attorneys have joined us around the country since our last edition of the *Observer*.


Jeremy Jones

Jeremy Jones has joined our Charlotte Office in the Southeast Region from Quantico, Virginia where he served with the FBI as a lawyer since 2004. Jeremy is a *magna cum laude* graduate from Western Carolina University where he was the economic student of the year, and won second place and second best brief nationally in the trademark moot court competition while at the University of Tennessee Law School. Jeremy was a diesel mechanic, medic, and paratrooper for the 82nd Airborne in the United States Army as well. ■


Julie Noonan

Julie Noonan joined our Denver Office in the Rocky Mountain Region and is licensed to practice law in the states of Colorado, Nebraska, and Illinois. With Julie's addition, we now have licensed subrogation attorneys in 42 of the 50 states, plus the District of Columbia. Julie is a graduate of Iowa State University with a B.A. in finance and attended Creighton University School of Law before graduating in 1992. ■


Katherine O'Malley

Katherine O'Malley has joined the Chicago Office in our Midwest Region. Katherine attended Indiana University as an undergraduate where she had a double major in biology and chemistry, which will be helpful in dealing with complex/technical issues in our subrogation cases. Katherine graduated from DePaul University College of Law and has been handling litigation matters for eight years, with a number of cases going to verdict by way of arbitration, bench trials, and jury verdicts. When not working on files, Katherine likes to spend time with her children; 3-year old Aiden and 1-year old Grace. ■


Leslie Flint

Leslie Flint has joined our San Diego Office in the West Region. Leslie earned her undergraduate degree in journalism from the University of Maryland and her law degree from the University of San Diego Law School where she was a member of the National Mock Trial Team. Leslie was awarded the Virginia C. Nelson graduation prize for advanced advocacy at San Diego. Leslie's three years as a magazine editor in Manhattan will no doubt help her writing briefs and fending off all the motions that defense counsel insist on filing against us. ■


Ken Rockenbach

Ken Rockenbach has joined our Texas Offices in Dallas and Houston. Ken received his undergraduate degree from Vanderbilt and his law degree from Emery University Law School. Ken handled commercial litigation matters for nine years before joining us. Ken worked as a caddy for professional golfer Lee Trevino before settling into the practice of law. ■


Jim Schultz

Jim Schultz joined our Philadelphia Office Subrogation Department as of counsel in February. Before joining the firm, Jim was the Director of Outreach and Law Enforcement Coordinator for the U.S. Attorney's Office for the Eastern District of Pennsylvania. While there, Jim worked closely with the United States Attorney on policy and public awareness initiatives in the area of violent crime, identity theft, predatory lending, and healthcare fraud. Before joining the U.S. Attorney's Office, he served as a litigation associate with several firms handling insurance subrogation, commercial litigation, product liability, construction defects, and creditor's rights.

Jim earned his law degree from Widener University School of Law and his undergraduate degree from Temple University where he played for the Temple Owl football team. ■

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