COZEN O'CONNOR

SUBROGATION AND RECOVERY OBSERVER

NEWS ON CONTEMPORARY ISSUES

Fall 2007

MESSAGE FROM THE CHAIR

TO THE FRIENDS OF COZEN O'CONNOR:

Dear Clients and Friends:

As football season gets underway and the exciting post-season baseball action has started, Cozen O'Connor's Subrogation Department is pleased to announce the continued expansion of our team roster. The Fall 2007 edition of the Subro Observer includes the introduction of five new attorneys in Philadelphia, Charlotte, Chicago, San Diego, and Los Angeles. As many of you are aware from our recent announcement, we have been privileged to bring a number of other experienced subrogation attorneys onboard in key locations throughout our 23 offices. Several of these attorneys have expertise in specialized recovery practice areas such as maritime, boiler and machinery, and energy claims.

The verdicts and appellate decisions reported within the Observer continue to reflect our commitment to take cases to trial for you, our valued clients, so as to maximize recoveries and establish favorable precedent for the subrogation industry. Our subrogation attorneys take to trial more cases in a given year than many litigation firms take to verdict in a decade, which is well known by our opposition. This directly redounds to your benefit, as manifested by the substantial and favorable recoveries we have achieved on your behalf per our attached case summaries.

We hope you find this information informative, and look forward to continuing to work with all of you as we enter the stretch drive for the 2007 subrogation season.

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SPOTLIGHT ON...


Phil Carroll

Phil Carroll of our Chicago Office in the Midwest, who joined Cozen O'Connor last year, recently obtained an outstanding verdict on behalf of **State Farm** that will have a great impact on many pending claims against the same defendants. Although the actual amount of the claim at stake was relatively small, the issues regarding liability and causation were critical because of numerous other claims. In short, the trial was essentially for millions of dollars in claims and was both tried by Phil and defended by the defendants with that in mind.

The case was tried in San Bernardino Superior Court – Rancho Cucamonga District for almost the entire month of August. State Farm's insured suffered water damage caused by flexible connectors distributed by Robert Manufacturing under the name Bob Flex Water Lines. These connectors included a component part supplied by CJC Enterprises d/b/a Hydra-O-Seal, which was also a defendant. The particular part was a barbed plastic insert that allegedly failed inside the Bob Flex line. Phil proceeded under the theory that the barbed insert was made of an improper material for its intended application. We alleged that the material would suffer hydrolysis, degradation, and eventual failure in the water line.

Not surprisingly, the defendants claimed that the material was appropriate and Defendant CJC also argued that the failure was the result of improper crimping of the flex line by Robert Manufacturing, resulting in the barbed insert failure. While normally having one defendant blame the other usually helps the plaintiff, in this case it was problematic. Robert Manufacturing has a $100,000 self-insured retention per claim and is on the verge of bankruptcy, with no reported assets to satisfy a substantial judgment.

The trial started on August 2, 2007 and lasted almost four weeks. The 12-person jury found for plaintiff on all counts against the defendants, including both strict liability and negligence for design, manufacture, and failure to warn. The jury allocated 70% fault to Robert Manufacturing and 30% to CJC. The strict liability finding was absolutely critical because State Farm can collect 100% against either defendant, thus alleviating any problem in connection with the financial condition of Robert Manufacturing and its self-insured retention per claim. As an added bonus, the jury also found that Robert Manufacturing violated the California Legal Remedies Act (CLRA), which we are arguing will enable our client, State Farm, to recover attorneys' fees.

Because the trial was bifurcated on the issues of liability and damages, a damages trial will be scheduled if a stipulation cannot be agreed to between the parties. Most important, because it was a test case for many other losses throughout the country, State Farm and other insurers will have the opportunity to use offensive collateral estoppel and *res judicata* in those other claims. The defendants have now agreed to mediate all claims in an effort to resolve everything at once.

The Los Angeles Office of Cozen O'Connor, particularly Mark Roth and Gerry Harney, provided Phil with invaluable help on California law and jury instructions. All in all, a truly remarkable result by Phil Carroll.

RECENT VERDICTS

A PINCH - HIT HOME RUN


Rob Jones

Rob Jones of our Atlanta Office in the Southeast Region obtained a trial victory for one of our clients recently. The case involved a fire loss in a 35-year old residence of the insured. The residence was vacant at the time of the fire because the insured was completing renovations to the home, which he rented through the Atlanta Housing Authority's Section VIII Housing Program. The insured hired the defendant, a local

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Elliott R. Feldman, Esq., Chairman,National and International Subrogation and Recovery Department, 800.523.2900 or 215.665.2071 or efeldman@cozen.com

contractor, to install new tile flooring in the home. The defendant's employees were performing flooring work in January 2005 when they decided to start a fire in a pre-fabricated metal fireplace to keep warm during a cold day. Twenty minutes later, the roof was on fire.

The initial origin and cause investigator hired by our client, opined that pre-fabricated metal fireplaces, particularly of this age, are a serious fire hazard. He also concluded the fireplace had been improperly constructed and maintained by the insured. Pursuant to procedural rules, we designated him as a non-testifying consultant but the Court allowed the defendant to call him in its case. The Georgia statute of repose had long since expired, which prevented any claim against the manufacturer or installer of the fireplace.

Throughout the case, the two employees of the defendant who were present at the time and actually started the fire could not be located. The defendant insisted that they had no contact information for these employees. Rob pursued this issue with defense counsel and, on the morning of the pre-trial conference three days before trial, defense counsel advised that one of the two employees had been located. The former employee was deposed on the Friday before trial was to start Monday, July 16.

At trial, the insured testified that he had owned the home for 27 years and had had the chimney inspected and cleaned only once, 19 years before the fire. We called the defendant and his employee as on cross-examination in our case and both made damaging admissions. One of them included a statement by the defendant to our insured at the fire scene that he would "do whatever it takes to make it right" just after the fire was extinguished. He also admitted to falsely verifying answers to interrogatories that he had never seen before.

The defendant called the subrogating insurer's initial origin and cause expert who testified that the fireplace had been improperly installed and maintained. Rob was placed in the somewhat awkward position of cross examining the original cause and origin expert retained by the carrier. Rob was able to secure very helpful testimony that the defendant's employees necessarily would have had to have started a substantial fire in order to have caused a crack in the back of the firebox, which allowed the fire to escape and ignite the home.

The jury found the defendant 70% responsible for the fire damage and awarded $64,603.50 of the total payment of $93,719.40. Defendant offered $20,000 before trial.

ATTACK OF THE TRANSFORMER


Mark Roth

Mark Roth of our Los Angeles Office in the West Region obtained a liability verdict in a bench trial with the judge taking over 100 days to issue his 14-page ruling. Shortly before the damages phase of the trial was scheduled to begin, the defendant finally surrendered and paid $1.2 million to **Travelers**, which represented a substantial increase above the $800,000 loss because of attorney's fees and costs. **Laura Guinn-Hall**, Director, Subrogation Major Case Unit, handled the matter for Travelers.

The case involved the failure of a transformer owned by the Los Angeles County Department of Water and Power (DWP). The judge was presented with the "chicken or the egg" scenario based upon DWP's defense. We contended that the DWP transformer exploded and that oil from the transformer was ejected and thereafter ignited, causing the fire to the home of Travelers' insured. DWP contended that a fire started in the insured premises and spread to its equipment via "contamination flashover." After hearing eight days of testimony, the trial judge adopted Mark's entire causation theory and found against DWP. DWP had had enough of Mark and his team and settled a week before the damages phase of the trial. The successful liability verdict, based upon California's inverse condemnation theory of liability, enabled Mark to recover attorney's fees, costs, and interest resulting in a rare recovery in excess of the loss payment, a result that speaks for itself.

BASEMENT MAKEOVER RESULTS IN TOTAL FLASHOVER


Jim Tarman


Ellyn Farley

Jim Tarman and **Ellyn Farley** of our Chicago Office in the Midwest Region successfully tried a case in Des Moines, Iowa on behalf of **Penny Ditz of American Family**

Insurance. The case arose out of a fire at the insured's home that resulted in a total loss. The complete devastation of the fire compromised the remaining physical evidence and bulldozing by the fire department during overhaul only added to our woes.

Undaunted, Jim and Ellyn developed a theory that the fire started as a result of damage to electrical wiring, which occurred during a basement remodeling project that started several months before the fire and was still proceeding at the time of the fire. Sophisticated metallurgical testing which our experts conducted corroborated the theory. This was important scientific evidence because there were a number of subcontractors working in the area where the damage occurred.

Through expert testimony, Jim and Ellyn were able to narrow down the potentially responsible subcontractors and also develop a theory against the general contractor for failing to respond to problems at the site and for overall lack of supervision and control of the project. Following seven days of testimony, the jury deliberated for three days before returning a verdict in American Family's favor and against the contractor and the two subcontractors for 90% liability. With pre-judgment interest, American Family ultimately recovered more than the stipulated amount of the damages that were in excess of $800,000. A great team effort by Jim and Ellyn on a very tough case.

GEAR UP

Chris Reain

Brett Rideout

Chris Reain and **Brett Rideout** of our Toronto Office in Canada won a seven-day jury trial for **Chubb UK** in the spring of 2007 in a file handled by **Mike Besant** and **Richard Hudson**. Chubb UK insured a large auto part supplier/ manufacturer. The claim arose from corrosion damage to two gear-cutting machines that occurred during transportation from a factory in Aurora, Ontario to Furtwangen, Germany. In June of 2003, the insured had agreed to lease three gear-cutting machines to a consignee in Germany as the company did not have the expertise to manufacture a certain specialty gear for one of the large automakers.

On June 29, 2003, the insured contracted with a company to pack and crate the machines and deliver the machines to a port in Hamburg, Germany. There was no written contract between the insured and the shipper but the insured paid approximately $3,000 for "anti-corrosion protection." The company receiving the machines made its own arrangements to pick up the machines at the port and transport them to its factory in Furtwangen. Extensive corrosion damage was discovered on the machines when the containers arrived on August 5, 2003.

Approximately $500,000 was required to repair the machines and to rent replacement machines so that the company could perform its contract. Those amounts were billed back to the insured. There were significant issues with respect to causation and timing of the damage as well as the nature and scope of the "anti-corrosion protection."

After hearing all of the evidence during the seven-day trial, including expert evidence, the jury agreed with Chris and Brett that the defendant failed to properly apply its anti-corrosion product to the packaging of the machines.

EXTINGUISHED DEFENDANTS

Jeff McConnaughey

Jeff McConnaughey of our Atlanta Office in the Southeast obtained a jury verdict in the spring of 2007 on behalf of **Eric Peterson of Travelers** in the United States District Court in Atlanta. The verdict was in excess of $1,000,000 against a fire suppression service company that had offered $300,000 before trial. One of the defendants, a duct cleaning company, settled for $700,000 before trial and there was no offset applied to the verdict against the fire suppression service company. Remarkably, Jeff obtained a total recovery for our client in excess of $1.7 million even though the paid amount on the claim was $1.67 million (The third such recovery reported in this *Observer* in which our client's judgment substantially exceeded its damages).

The case involved a fire in a multi-story hotel. The fire originated under the exhaust hood of the stove in the

kitchen of a steak house located on the main floor of the hotel. The fire was not extinguished by the hood suppression system and extended into the exhaust ducts, which were covered with grease. As a result, fire spread to the exterior of the building. The heat of the fire ignited combustible insulation beneath the metal cladding of the building exterior and thereafter spread very quickly up the exterior wall of the building while also triggering sprinklers inside rooms on several floors.

As a result of the fire, there was heat and water damage to a number of the hotel's rooms, damage to personal property in the hotel, damage to the exterior of the hotel building itself, damage resulting from interruption of the hotel's business, and damages to the restaurant. Travelers insured the hotel.

We instituted suit against the company contracted to clean the kitchen exhaust ducts and against the company maintaining the hood fire suppression system that failed. The duct cleaning company settled prior to trial for $700,000 and was dismissed from the action. The restaurant's insurer settled for an additional $28,000 from the suppression system maintenance company before trial and was dismissed as a party from the action before trial began. The case was tried for three days in the United States District Court for the Northern District of Georgia before the Honorable G. Ernest Tidwell and a jury. The final verdict was $1,000,312 after one and a half hours of deliberation.

GENERATING A RECOVERY


Steve Halbeisen


Jason Schulz

Steve Halbeisen and **Jason Schulz**e of our Dallas office in the South Central Region obtained a jury verdict for **Debbie Sullivan and Norma Rhodes of Chubb** in a very difficult case involving a week-long trial. Chubb insured the owners of a 10,000 square foot home in an exclusive section of Houston. The insured was personal friends with the owner of the defendant contractor so the strategic decision was made to file suit in Chubb's name. The fire originated in a section where the exhaust pipe of a standby generator passed through the garage wall. There was no dispute concerning where or how the fire started – only who was responsible.

The home was built in 1991. The plans required the general contractor, through two of its subcontractors, to install an "approved heat-isolating thimble" where the exhaust pipe passed through the garage wall and to insulate the exhaust pipe. The architect and engineer also had contractual obligations to inspect the construction in order to verify the work had been performed in accordance with their plans. Despite the fact that the lack of thimble insulation would have been obvious to anyone familiar with the generator's manual or the construction plans, it was not installed.

The contractors and design professionals were protected by the Texas ten-year statute of repose. Pursuant to a recent Texas tort-reform statute, the defendant contractor designated these five entities as "responsible third parties" on the jury verdict. The Court, over objection, allowed all five potentially responsible third parties on the jury verdict along with the defendant and a settling tortfeasor.

During the week-long trial, we established that the generator provided 390 hours of trouble-free service from 1991 to 2004 despite the omissions during construction. Steve focused the case on the defendant's conduct in the month leading up to the fire in 2004. During a service call a month before the fire, defendant's technician recommended that the exhaust pipe be wrapped from the engine to the garage wall to reduce the heat in the garage. Apparently, he did not notice that there was no thimble in place. A week after the wrap was installed, the insureds noticed a burning smell while the generator was operating during its regular Monday morning tests. Defendant sent a different technician to troubleshoot the burning smell that same day and the technician attributed it to a hot motor for the air conditioning equipment in the garage. The technician did not bother to look at the exhaust pipe so he also did not notice there was no thimble in place. The generator operated as designed for two hours one week later during a power outage. The fire started during that time.

The jury returned a verdict finding defendant, and all six of the "responsible third parties", negligent. The settling

tortfeasor was not found negligent. The jury assigned 20% of the liability to the defendant resulting in an award with pre-judgment interest of $425,000.

APPELLATE VICTORIES

MASSACHUSETTS


Jim Cullen

Jim Cullen of our Philadelphia Office in the Atlantic Region received an excellent decision and opinion from the Massachusetts Superior Court in *OneBeacon Insurance Group v. RSC Corp*. on June 25, 2007. Jim's impressive victory at trial on behalf of **Dave Maus of OneBeacon** was previously reported in our *Fall 2006 Issue*. OneBeacon's insureds, George and Sharyn Neble, suffered major water and some structural damage to their home in Winchester, Massachusetts during a storm in December 1998. The defendant was performing renovation work on the house at the time and improperly secured a tarp on the roof with bad weather expected in the forecast.

The defendants raised five points on appeal. In an unanimous three-judge opinion, the Court dispatched the issue of whether the trial court improperly barred the "Act of God" defense by noting that "the jury could properly reach the conclusion that the problem was not the amount of rain that fell but rather that fact that Ryan's tarpaulin system collected water instead of shedding it."

The second issue addressed by the Court was important for the damages awarded. The trial court allowed OneBeacon to recover for code upgrades necessitated in repairing the house. The Court observed that there was no windfall to the plaintiffs because it originally had a code-compliant house rather than one that was non-compliant. The Court reasoned that plaintiffs were not required to bring the house up to code before the defendant's negligence because it had been grandfathered in its pre-code condition.

> Code compliance was not to make the house more livable or comfortable; it had nothing to do with the house being obsolete, non-functioning, or worn out. It is simply part of the cost of doing the repair work necessitated by the defendants' failure to take adequate precautions against water damage. The recovery of the cost of the code upgrades did not violate the central principle, that "the replacement or reconstruction itself must be reasonably necessary in light of the damage inflicted by a particular defendant." *Trinity Church in City of Boston v. John Hancock Mutual Life Ins. Co*., 399 Mass. 43, 50 (1987).

The Court also quickly dismissed the final three issues raised on appeal in the final paragraph of the opinion. The defendants did not appeal to the Massachusetts Supreme Judicial Court and the entire verdict, plus interest, was paid to our client, OneBeacon.

VERMONT


Dan Luccaro

Dan Luccaro of the Philadelphia Office in the Atlantic Region obtained a favorable reversal from the United States Court of Appeals for the Second Circuit in January of 2007 in *Allstate Ins. Co. v. Hamilton Beach/Proctor Silex*. We filed suit on behalf of our clients, **Allstate Insurance Company and Granite Mutual Insurance Company,** against Hamilton Beach for a coffee maker fire that occurred in St. Albans, Vermont. Allstate and Granite Mutual insured the building owner and tenants. The fire occurred in May 2002 after one of the insureds purchased a coffee maker from Ames Department Store. He brought it home and placed it, still packaged, on his kitchen floor. The coffee maker remained there until the night of June 13, 2002 when the insured removed it from its packaging and set it up. The following morning he used the coffee maker for the first time. Before leaving for work, he turned it off but did not unplug it. Less than three hours later, a neighbor saw flames coming from the insured's home and called the fire department. Although the fire department arrived just two minutes later and promptly brought the fire under control, it had caused substantial damage to the insured's home and that of his tenants. Our investigation focused on the coffee maker based on the fire damage.

Following an investigation by the St. Alban's Fire Department and an independent investigation by experts retained by the insurers, we instituted suit in federal court in the United States District Court for the District of Vermont. Hamilton Beach moved for summary judgment arguing that plaintiffs could not establish a defective condition in the coffee maker, an essential element of both the product liability and breach of warranty claims. Dan argued to the trial court that we had produced sufficient circumstantial evidence to establish the coffee maker was defective in order to preclude summary judgment as to both claims. A magistrate judge issued an opinion that the circumstantial evidence was not sufficient to show that a defect in the coffee maker was the more probable cause of the fire when compared to all other possible causes. The magistrate judge declined, therefore, to consider whether the Supreme Court of Vermont would adopt a malfunction theory and recommended granting Hamilton Beach's Motion for Summary Judgment in its entirety. The District Court judge adopted the report and recommendation without modification and dismissed the Complaint.

On appeal, the Second Circuit agreed with Dan that both determinations supporting the District Court's entry of summary judgment were in error. The Court found that there was circumstantial evidence sufficient to allow a jury reasonably to find: (1) that a defect in the coffee maker was the more probable cause of the fire; and (2) that the coffee maker was in substantially the same condition as it was when last in defendant's possession and control.

The Second Circuit noted in a footnote that the Vermont Supreme Court would most likely adopt the malfunction theory but noted that the Court did not need to do so because it found under the causation standards already adopted by the Vermont Supreme Court that plaintiffs had submitted evidence sufficient to defeat the motion on the breach of warranty and products liability claims. The Court found "that plaintiff's expert testimony both eliminating all possible sources of ignition other than the coffee maker and opining that the coffee maker was the ignition source, by way of the burn pattern, constitutes circumstantial evidence sufficient to allow a jury reasonably to conclude that a defect in the coffee maker was the more probable cause of the fire." Dan was thereafter able to settle the case on favorable terms for our clients.

NOTABLE SETTLEMENTS

SPONTANEOUS RECOVERY


Dave Higgins


Mike Durr

Dave Higgins and **Mike Durr** of our Charlotte Office of the Southeast obtained an excellent settlement for **Mike Ellis of Zurich** in the spring. The case involved a fire that occurred while a home was being constructed on Dataw Island, South Carolina. The fire started in the second floor attic. The day before the fire, the painting contractor had been applying stain on the second floor but not in the area of origin. No traces of stained rags were found in the home, and a box of discarded rags containing stain was found in the dumpster outside the home. The painting contractor claimed that the box contained all of the stained rags that had been used. The opposing origin and cause expert opined that an incendiary fire could not be eliminated, especially since a second floor window with scaffolding up to it had been found open at the time of the fire. Despite these problems, Dave and Mike were able to obtain a settlement of almost 50% of a claim that was slightly in excess of $1,000,000.

LIGHTNING STRIKES TWICE


Doug Fox


Dave Smith

Doug Fox and **Dave Smith** of our Philadelphia Office in the Atlantic Region were successful in achieving a $755,000 settlement, representing over 60% of the recoverable claim, for fire damage to a home caused by a lightning strike. **Liberty Mutual** insured the home in the Woodbury, Connecticut area and **Hedy Serensits** handled the file for Liberty Mutual.

Neighbors reported that a lightning storm passed through the area at around 5:00 a.m. The fire was not reported until 6:00 a.m. when neighbors saw the house in flames and called "911." Liberty Mutual's insured had a

centrally monitored burglar and fire alarm that did not send a signal during the fire. Our expert determined that the alarm panel box had not been properly grounded by the alarm company and that the fire would probably have been reported timely if the alarm system had functioned.

Defendant alarm company filed two separate motions to dismiss and for summary judgment based upon the standard alarm contract exculpatory language. Doug and Dave were able to convince the judge that certain work orders issued by the alarm company two years after the alarm system was installed did not contain identical exculpatory language and, therefore, created an issue of fact concerning whether the original language was intended to apply to subsequent work. The defendant's motion for reconsideration was also denied.

The settlement is particularly noteworthy considering that the defense experts opined that the house and contents would have been a constructive total loss even if the alarm had properly activated, and there was no way to tell after the fire whether the alarm panel box would have been damaged by the strike even if properly grounded.

SIGN OF THE TIMES

Jeff Calabrese

Jeff Calabrese of our Chicago Office in the Midwest Region obtained a hard fought settlement for **Brittany Styles** of the **Ohio Casualty Group** following a fire in a strip mall. Ohio Casualty insured the building owner in Indiana. The fire was attributed to a neon sign and there were three related cases involving tenants that were consolidated for discovery and trial. We asserted a malfunction theory because the fire destroyed most of the evidence.

Our experts determined that the fire originated within the second letter "a" of the word "restaurant" in one of the tenant's neon signs. Our experts eliminated all potential sources of ignition within the area or origin except the sign's 15,000 volt electrical conductors and associated components.

Jeff argued, using the fire triangle of heat, oxygen and fuel, that the only way this sole ignition source could come in contact with fuel was an installation error by the defendant's employees. We contended that this error created an electric ground path between the sign's conductors and a fuel source.

Our case was larger than the other three related cases. All three of the cases were mediated and settled at the same time. Jeff took the lead at the mediation since the damages suffered by Ohio Casualty were slightly in excess of $400,000. Although defense counsel tried to divide and conquer the plaintiffs, attempting to pick off the smaller claims, all plaintiffs remained united and Jeff obtained a settlement of $272,250 for Ohio Casualty's claim.

RES IPSA … TO THE RESCUE

Phil Fant

Phil Fant of our San Francisco Office in the West Region obtained a $259,000 settlement on a $269,000 claim for **Jim Winters of American International Recovery and AIG**. A pesticide company was working on the roof of a building when the fire broke out. We alleged that the pesticide company was responsible for the fire by knocking over a light. The defendant denied the allegations and there were no witnesses to prove the case except the employees of the defendant, who were not exactly volunteering to step forward. Phil argued *res ipsa locquitar* and was able to achieve the extraordinary recovery after filing suit. An excellent result on a case with circumstantial evidence.

CRIME DOESN'T PAY BUT CRIMINALS DO

Ned Tolbert

Ned Tolbert of our San Diego Office in the West Region obtained an outstanding result for **Art Wasielewski and Nina Krull of Zurich** in July. Ned recovered 100% in this fidelity subrogation claim with a recovery of $234,289.07.

A 15-year employee and bookkeeper for the insured, a well known California college, engaged in an embezzlement scheme for more than six years. The employee redirected funds intended for tax agencies to her personal accounts. Ned filed suit immediately to coincide with the criminal proceedings and also filed a *lis pendens* to cloud the title on the employee's family home, which we identified while conducting an asset search. We also included a claim for creation of constructive trusts and

began the process of contacting the employee's family members as potential defendants in a garnishment action since all had been beneficiaries of the embezzled funds.

As a result of the concerted actions, the employee and her husband agreed to execute an instruction to escrow to pay Zurich the full amount of the claim out of the sale of the family home. The home sold less than four months after the date of the filing of the *lis pendens* notice. In this case, crime did not pay but the criminals did.

THE GREAT ESCAPE


Howard Maycon

Howard Maycon of our Los Angeles Office in the West Region recently recovered $275,000 for **Kellee Rose of CSE Insurance Company** in a unique factual setting. In a case of first impression, even in Los Angeles, the claim involved a lizard known as the "bearded dragon." The fire occurred in the early morning hours while the insureds were out of the country. Our fire investigators determined that the fire started on the bed of the insured's son who owned the bearded dragon. A portable heat lamp and bulb used to keep the bearded dragon warm (lizards are cold blooded after all) were found on the bed after the fire. While admitting that she had removed the top of the bearded dragon's cage to feed it, the neighbor's daughter claimed that she replaced the top.

In one of the more creative defenses we have ever encountered, the defense argued that's the bearded dragon was a "known escape artist" and that he had pushed the top of his cage and heater onto the bed. Howard quickly dispatched this defense when he disclosed during discovery that the cage did not open up and down but rather slid on grooves horizontally. It had also helped Howard that the bearded dragon had been, tragically, found dead in his cage following the fire where he would have had to return after "escaping."

WELCOME ABOARD!

We are pleased to introduce four new Subrogation and Recovery attorneys and one who has returned to our fold. Svend, BJ, Marisa, Graham, and David look forward to assisting you with your subrogation questions and claims.


Svend H Deal

Svend H. Deal (Charlotte) graduated from the University of North Carolina at Chapel Hill School of Law and the University of North Carolina at Chapel Hill with a B.A. in International Studies. Svend had extensive business experience prior to law school, which led him to an externship with the Honorable John Jolly of the North Carolina Business Court prior to graduation. Svend was a Member of the Entrepreneurial Law Association and has some exciting entrepreneurial experience. Svend has been involved with the Pro Bono Project, US National Whitewater Center, since 2005.


Benjamin Migliorino

Benjamin Migliorino (Philadelphia) graduated from University of Notre Dame Law School where he participated in the Business Law Forum. BJ graduated from Pennsylvania State University with a B.S. in Finance with Distinction where he was in the National Society of Collegiate Scholars and the Financial Management Association. He was in our Summer Associate Program in 2006.


Marisa Saber

Marisa Saber (Chicago) graduated from DePaul University College of Law, cum laude, where she received CALI awards in Legal Writing, Property and Civil Litigation. Marisa was also an associate editor of the DePaul Law Review. A native of Ohio, Marisa graduated, magna cum laude, from Ohio University with a B.A. in Political Science. Prior to starting her career as a lawyer, Marisa worked as a full-time paralegal in the Chicago Office while attending law school, and also was a summer associate.


Graham Freer

Graham T. Freer (San Diego) graduated from University of San Diego Law School and Brown University with a B.A. in Organizational Behavior & Management. Graham began working with the San Diego office in 1998. He has returned to join the Subrogation Group after spending four years trading U.S. Treasury Bond Futures through the Chicago Board of Trade. Graham is licensed to practice in California and Arizona.


David R. Denton

David R. Denton (Los Angeles) joined the firm in August 2007 as an Associate in the Subrogation and Recovery Department. Prior to joining the firm, David was an associate with Bragg & Kuluva in Los Angeles. He was also an associate at Hahn & Bolson, and McKay, Bryne & Graham. In addition to his work on subrogation and recovery matters, David has experience in insurance defense, civil litigation, business, intellectual property, corporate counseling, personal injury and employment litigation matters. David earned his law degree from Loyola Law School, where he was technical editor of the entertainment law journal, and his undergraduate degree, magna cum laude, from Pepperdine University.

SPECIAL DUTY


Peter Lynch

Some of you may recall attorney **Peter A. Lynch** for his fine work on your subrogation files or his excellent articles and updates from interFIRE.org.

We are proud to report that Lt. Colonel Peter A. Lynch continues to serve his country as a Law Enforcement / Corrections Officer with the United States Marine Corp. in Iraq. Peter, at the request of his country by virtue of his status in the Reserves, traded the beautiful climate of San Diego for the more challenging climate in Iraq. Peter reports progress by our brave troops and he remains in all of our throughts and prayers. We hope to see Peter back safely soon.


David Bessho

David Bessho of our Atlanta Office was recently recalled to active duty for a second time as a Lt. Colonel with the United States Army. Dave served a one-year tour of duty in Afghanistan during 2003. David is in the Civil Affairs Unit and will be heading to Iraq shortly. We hope that David and his comrades in arms all return to us in good health as soon as possible.


Scott Tarbutton

Scott Tarbutton of our Philadelphia Office deserves special recognition for implementing the Cozen Soldier initiative at the Philadelphia Office of Cozen O'Connor. Developed in January 2005, the program identifies Cozen employees who have family members or close friends in the military fighting overseas in Afghanistan and Iraq, or elsewhere. Every 4-6 weeks, Scott organizes Soldiers Drives in the Philadelphia Office where care packages are assembled and shipped to our soldiers overseas. By all accounts the Cozen Soldier initiative has been a huge success. To date, the program has shipped over 5,000 lbs. of needed items and supplies to approximately 30 Cozen Soldiers fighting around the world. Indeed, upon returning to the United States from their deployments, several of the soldiers have stopped by our office to thank the firm and Scott for supporting all soldiers fighting overseas. In addition to his efforts on behalf of the soldiers generally, Scott stays in close touch with the families and friends of the Cozen Soldiers. The Subrogation and Recovery Department of Cozen O'Connor in particular is delighted to recognize Scott for his service and work on behalf of our dedicate servicemen and servicewomen in Iraq and Afghanistan.

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