Gallagher Sharp ATTORNEYS

Insurance Newsletter

February 2015

Special Interest Areas:

Individual Highlights:

ADDITIONAL INSUREDS

Whether a party is an additional insured ("AI") may have significant consequences for the AI, the involved insurers, and any other party involved in a claim. This article addresses a framework for analyzing AI claims.

Review any contracts between the involved policyholders. Typically there is a contract between the party seeking AI status and the policyholder. That contract must be scrutinized. The following inquires might be appropriate: Does the contract provide that one party shall defend, indemnify, and hold harmless the other party? Does the contract require one party to name the other as an AI? Does the contract specify what state law applies to the contract? Does any indemnity provision provide that one party shall indemnify the other party for that other party's negligence or sole negligence? Does any indemnity provision expressly waive any workers' compensation immunity? Are limits of insurance set forth? Is any coverage to be primary, concurrent or excess?

Review the policies of insurance. Of course, in order to determine the rights and obligations of the parties under policies of insurance, it is essential to review the policies. In the case of an AI tender, the actual contract of insurance -- not a certificate of insurance -- must be analyzed. Among possible pertinent inquiries are: What AI coverage, if any, is afforded? Is any AI endorsement applicable to any underlying contract? If the AI endorsement refers to any contract between the two policyholders (some endorsements do, others do not), what is the effect on any coverage that may be owed? Are there any potential exclusions, for example, exclusions where the injured party is an employee? What state law applies to the AI endorsement? (The state law that applies to the underlying contract may not be the same law that applies to the AI endorsement.)

Investigate the claim. Coverage determinations are typically made by comparing the allegations of the claimant to any coverage afforded by the policy. Many AI claims are made in the context of personal injury matters. In analyzing personal injury claims, the following questions may be relevant: Was the injured person an employee of one of the parties? What acts or omissions does the injured person allege caused his or her injury? Is it alleged or suggested that any act or omission of the party seeking AI status caused the person's injury? Is it alleged or suggested that any independent act or omission of anyone else caused the employee's injury? If so, did that other person contract with any of the policyholders involved in the AI question? If so, what does that contract provide? Also, what does any insurance policy of that other person provide?

The investigation also should include delving into the facts. When the actual facts appear to deviate from the alleged facts, the ultimate right and duties of the parties may have to await an adjudication of those facts.

Continued on Page 9

Supreme Court of Ohio

A CGL exclusion for semitrailers enforced despite of challenge that it was covered "mobile equipment" considering the context of the policy provisions.

Plaintiff's decedent was killed when she drove her automobile into a parked semitrailer that hauled paving machinery to a road construction site. The trial court and court of appeals held that a CGL policy issued to the semitrailer owner covered the accident, although the policy contained an "auto" liability exclusion, and "auto" was specifically defined in the policy to include a "semitrailer." "Mobile equipment", defined in the policy to include "[v]ehicles not described … above maintained primarily for purposes other than the transportation of persons or cargo", was excluded from the policy definition of "auto." The trial court and court of appeals held that paving machinery was not "cargo", and, therefore, the semitrailer was "mobile equipment" excepted from the policy's definition of "auto" and "auto" liability exclusion. The Supreme Court of Ohio reversed the trial court and court of appeals decisions. The high court held, "In determining whether an insurance policy provision is ambiguous, a court must consider the context in which the provision is used." *Sauer v. Crews*, 140 Ohio St.3d 314, 2014-Ohio-3655.

An Ohio resident living in a home owned in part with his mother was not entitled to umbrella liability coverage under his parents' policy because his parents' "clear intent" was to be domiciled in Florida regardless of father's part-time work in Ohio.

Plaintiff's decedent was riding his bicycle when he was struck by a vehicle driven by Robert Schill ("Robert"). Robert sought excess liability coverage under an umbrella policy issued to his parents, James ("James") and Jean ("Jean") Schill. The policy defined an "insured" to include "'[y]our' 'resident relatives' for any 'occurrence', involving an 'automobile' they own, lease, rent or use," and a "resident relative" as "[a] person related to 'you' by blood, marriage or adoption that is a resident of 'your' household and whose legal residence of domicile is the same as yours." It was undisputed that Robert's residence was an Ohio home owned in part by Jean, so Robert was domiciled in Ohio. Jean was domiciled in Florida. James's domicile, however, was at issue." The Supreme Court held, "James's regular work activity in Ohio does not contradict an intent to make Florida his permanent residence, nor does it change the fact of his residence in Florida." The Court explained, "James's clear intent was to work part-time in Ohio and be domiciled in Florida." Therefore, the Court concluded that Robert was not an insured under his parents' umbrella policy. *Schill v. Cincinnati Ins. Co.*, 2014-Ohio-4527.

Ohio State Appellate Decisions

Policy's definition of "insured" excludes a person who is a named insured for underinsured motorist coverage under another policy.

Plaintiff Robert Massa was injured in a car accident while he was the passenger in a car driven by Peter Hammer. After obtaining the policy limits from the tortfeasor's insurer, Massa also recovered from his own policy's UIM coverage. Massa then sought to collect UIM coverage from Hammer's insurer, Westfield. The trial court granted summary judgment in favor of Westfield on the basis that Massa was not an "insured" under the Westfield policy, which defined "insured" as "[a]ny other person occupying your covered auto who is not a named insured or insured family member for underinsured motorist coverage under another policy." On appeal, Massa argued that it was undisputed that he was not a "family member" under the Westfield policy and that, applying the last antecedent rule of construction, the phrase "for underinsured motorist coverage under another policy" only modifies "family member." Therefore, Massa argued that the Westfield policy should be construed to include UIM coverage for him even though he had UIM coverage under his own insurance policy. The court, relying on *Wohl v. Slattery*, 118 Ohio St.3d 277, 2008-Ohio-2334, 888 N.E.2d 1062, ruled that the last antecedent rule did not apply and held that "viewing the policy as a whole, it is evident that the definition of 'insured' for purposes of UIM coverage is unambiguous and narrowly defined." Massa at ¶6. *Massa v. Westfield Group*, 1st Dist. No. C130639, 2014-Ohio-2805.

Excluding theft coverage where there is no "physical evidence" of the theft is valid.

Will Repair, Inc. was insured under a Commercial Package Policy issued by Grange Mutual Insurance Company. Will Repair discovered that a number of items were missing from its warehouse. Some of the missing items were found and recovered at a local scrap yard where they, apparently, had been sold after being stolen from Will Repair by one of its (former) employees who later admitted to one theft. The remaining items were never recovered and there were no signs of forced entry at the facility. The Grange Policy excluded coverage for "theft by employees" and for "[p]roperty that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property." Both the trial court and court of appeals found coverage excluded, reasoning that the "policy clearly and unambiguously excludes coverage in situations in which '[p]roperty * * * is missing * * * where there is no physical evidence to show what happened to the property.'" The courts further found that such a limitation does not render theft loss coverage "purely illusory" because the policy "does not require that an insured solve a theft, be able to show exactly what happened to missing property, or establish who stole missing property in order to obtain coverage for a theft loss." Rather, the policy "simply requires some 'physical evidence' of what happened to the missing property" such as "where a third-party theft occurs and is captured on videotape, a security alarm is triggered in connection with a loss, property damage such as broken doors, windows, or locks are found in connection with missing property, items used in connection with a suspected third-party theft are left behind, or the insured has some documentation establishing how and when covered property likely disappeared." *Will Repair, Inc. v. Grange Ins. Co.*, 8th Dist. No.100717, 2014-Ohio-2775.

Whether conduct is related to the scope of a business sufficient to be covered by an insurance policy issued is determined by the conduct itself not the events leading up to that conduct.

George and Reese had a long standing history of personal animus and public attacks which resulted in litigation over alleged defamatory statements. Westfield Insurance Company insured George's business entities under a commercial general liability policy and filed for declaratory judgment that it owed no duty to defend George in the defamation litigation filed by Reese because "the allegations against defendant George took place outside the scope of business conduct." The trial court found coverage excluded, and the court of appeals affirmed, reasoning that: "although George and Reese's animosity may have originated in their prior business dealings, we must look to George's alleged actions themselves -- and not to the events leading up to those actions -- to determine whether they were business related or personal in nature. We find nothing to demonstrate that George's alleged threats to Reese at the Velvet Dog [bar] were related to his businesses." *Reese v. George*, 8th Dist. No. 100276, 2014-Ohio-2760.

Tractor Used to Pull People on Public Road is Not a "Motor Vehicle."

A tractor used in a "bar crawl" to carry people in a trailer from one bar to the next tipped over, causing multiple injuries. The court of appeals found that there was no coverage under either the personal auto policy of the driver or the owner's farm policy. As to the latter, the owner argued that it was a "recreational vehicle" and covered. The court rejected the argument, citing a provision requiring the vehicle be "designed for recreational use" and finding a tractor is designed for farm use, not recreation. As to the auto policy, the language required that a covered "motor vehicle" be (1) subject to motor vehicle registration, or (2) designed for use on public roads. There was no evidence that the tractor fit either prong, reasoning that while the tractor could be used on public roads it was not designed for them. *United Auto Ins. Co. v. Schaeffer*, 6th Dist. No. E-13-037, 2014-Ohio-3854.

Language in insurance policy requiring policyholder to bring suit against insurer within three years is valid and enforceable.

Insureds brought suit against Grange Mutual Casualty Company seeking underinsured motorist coverage arising out of an accident that occurred on August 12, 2009. The suit was filed on November 30, 2012. Grange moved for summary judgment on the basis that its policy contained language requiring that a policyholder bring suit within three years from the date of an accident. The trial court granted Grange's motion. On appeal, the court of appeals relied on the Supreme Court of Ohio's decision in *Barbee v. Nationwide Mut. Ins. Co.*, 130 Ohio St.3d 96, 2011-Ohio-4914, 955 N.E.2d 995, and held that the language was enforceable. The court rejected the insureds' argument that the provision was against public policy because R.C. 3937.18(H) provides that such language is permissible. The court also rejected the insureds' argument that it was impossible to bring suit against Grange until the tortfeasor's policy limits had been exhausted, stating that the Supreme Court of Ohio in *Barbee* had already explained that exhaustion of a tortfeasor's liability limits is not a condition that must occur before an insured's underinsured motorist claim accrues. *Shrit v. Williams*, 2d Dist. No. 26164, 2014-Ohio-5173.

Genuine issues of material fact as to whether an insured acted in self-defense preclude summary judgment in favor of an insurer, even where a "self-defense" exception to intentional acts exclusion is expressly removed by an endorsement.

Michael Hawk sued B. J. Stocklin and Harry Larschied for damages after Hawk and Stocklin were involved in a physical altercation inside a bar owned by Larschied. Stocklin was a security officer at the bar, but was not on the clock at the time of the incident. Larschied's insurer, Cincinnati Specialty Underwriters Insurance Company (Cincinnati) filed a declaratory judgment action seeking a determination as to coverage, and the cases were consolidated. The trial court granted summary judgment in favor of Cincinnati, finding that coverage for Hawk's injuries was barred by the policy's assault and battery exclusion. The court noted that the policy's "expected or intended injury exclusion," which provided an exception for self-defense, was specifically deleted, by endorsement, and replaced with an "assault and battery" exclusion, which contained no such exception.

The court of appeals reversed, concluding that based on the evidence that had been submitted, genuine issues of material fact existed as to whether Stocklin had acted in self-defense under *Preferred Mutual Ins. Co. v. Thompson*, 23 Ohio St.3d 78, 491 N.E.2d 688 (1986) even in the absence of the self-defense exception. The court noted that there was a material issue of fact as to whether Stocklin was an insured under the policy because he was not on the clock at the time of the altercation. Notably, the court harshly criticized Cincinnati's use of 40 pages of endorsements:

> Clearly, if [Cincinnati] wanted to delete a significant provision of coverage from the original Policy, it could have simply removed that language from the original Policy prior to selling it to this bar owner. Instead, [Cincinnati] chose to leave intact the original exception to the exclusion and add on an endorsement, among forty pages of other endorsements, which in a rather complicated and cumbersome way, added language, modified language, and deleted language in order to eliminate the coverage provision (the exception to the exclusion) still set forth in the original Policy. As such, we have some concern as to whether this manner of "deleting" a category of coverage involving the reasonable use of force in self-defense, which might clearly be significant to a bar owner purchasing such insurance, does not itself create unnecessary confusion, if not inherent ambiguity in this Policy, at least when sold to a new customer in this form.

Hawk at ¶24. *Hawk v. Stocklin*, 3rd Dist. No. 1-13-56, 2014-Ohio-2335.

Policy issued in Ohio to Kentucky resident for Kentucky loss is illegal and unenforceable.

Hoop procured an auto insurance policy in Ohio and represented that he lived in Ohio. He then got into an accident in Kentucky, after which the insurer discovered that he actually lived in Kentucky. The trial court found the policy illegal and unenforceable, as the insurance company was not authorized under Kentucky law to issue policies to Kentucky residents or with respect to vehicles located in Kentucky. Thus, the insured's claim was dismissed. The court of appeals affirmed, rejecting an argument that the policy was voidable rather than void ab initio under the Ohio Supreme Court's ruling in *Allstate Inc. Co. v. Boggs*, 27 Ohio St.2d 216 (1971). *Boggs* was inapplicable because it did not address illegal contracts. Moreover, insurance contracts can be void ab initio for reasons other than those expressed in *Boggs*. *American Family Ins. Co. v. Hoop*, 4th Dist. No. 13CA983, 2014-Ohio-3773.

An insured is bound by the judgment entered against him in an underlying tort action in a subsequent claim against his insurer for the same loss.

Agic was involved in an accident while driving his trailer within the scope of his employment. He sued the other driver, who admitted negligence and defended on the basis that Agic sustained no injury. The tort case proceeded to trial and the jury determined that Agic sustained no injury in the accident. Meanwhile, Agic's disability insurer, National Union Fire Insurance Company of Pittsburgh, denied further coverage to Agic because its medical examination also revealed that Agic had no ongoing disability caused by the accident. Agic sued his disability insurer for coverage and also alleged bad faith. The court found collateral estoppel barred Agic's claim against National Union because "the issue of causation was 'actually and directly litigated' in a court of competent jurisdiction, and [Agic] had the opportunity to fully litigate the issue while represented by competent counsel." Further, the court reasoned that although National Union was not a party to the tort action "[b]ased on the jury's resolution of causation in his personal injury suit, [Agic] cannot now relitigate the issue of whether his injuries were caused by the accident, a finding that is necessary for entitlement to benefits under the Policy." *Agic v. Nat'l. Union Fire Ins. Co. of Pittsburgh*, 8th Dist. No. 100679, 2014-Ohio-4205.

Trial court erred in ordering restitution be paid to an insurance company relative to a stolen vehicle involved in an accident.

Defendant Johnson caused an accident in a stolen vehicle and pled guilty to receiving stolen property. The trial court ordered the defendant to pay $6,256.53 in restitution to the owner of the stolen vehicle's insurance company. The defendant appealed the sentence. Pursuant to R.C. 2929.18(A)(1), if the trial court imposes restitution, it must order the restitution be made to one of the following four categories: "(1) the victim or the survivor of the victim, (2) the adult probation department that serves the county on behalf of the victim, (3) the clerk of courts, or (4) another agency designated by the court." The appellate court rejected the argument that the insurance company was the victim "simply because, pursuant to a contract, the company agreed to and in fact reimbursed the insured for losses caused by the criminal conduct." Id. at P7. Therefore, the appellate court reversed the restitution order. *State v. Johnson*, 10th Dist. No. 14AP-336, 2014-Ohio-4826.

Gradual deterioration of negligently installed electrical connections resulting in a fire loss may result in a continuous trigger of insurance dating back to the installation of the wiring.

G&S Electric, Inc. performed electrical work at the Witscheys' home. The Cincinnati Insurance Companies insured G&S under a CGL Policy which was in effect when G&S performed the work. Motorists Mutual Insurance Company insured G&S under a subsequent CGL Policy. After both Cincinnati's and Motorists' CGL Policies had expired, an electrical fire occurred at the Witscheys' home. Nationwide Mutual Fire Insurance Company insured the Witscheys' home against fire under a homeowner's policy. Nationwide paid the fire damage claim and then sued G&S to recover its payments.

Both Cincinnati and Motorists initially refused to provide G&S with defense or indemnity because the occurrence was outside their coverage periods. But Cincinnati then reconsidered, agreed to defend, and settled the suit against G&S with Nationwide for $100,000. Cincinnati then sued Motorists for contribution. The trial court granted summary judgment in favor of Motorists, finding "that Motorists' policy did not 'provide coverage to G&S for the property damage sustained by the Witscheys in 2006 because that damage didn't occur during the policy period.'" The court of appeals reversed, holding that because Nationwide's expert opined that the fire was caused by gradual deterioration of the wire and surrounding wood, it was not clear that the loss was not, in part, within the coverage periods of Cincinnati and Motorists. Specifically, the expert opined that the fire resulted: (1) "from insulation degradation;" which caused (2) "charring and burning" that dries out the surrounding wood and eventually lowers "'its ignition temperature to the point in time that it ignites.'" The court concluded "that there was a possibility that there was property damage (i.e. ongoing charring and degradation of the wood thereafter igniting) during [each] policy period." The court "adopted a continuous trigger approach which would, barring other restrictions in the policy, require coverage in cases in which collateral damages occurring outside the policy period (such as the fire) were caused by initial and consequential damage that occurred during the policy period (such as the gradual degradation of the insulation and surrounding structures)." The court stressed, however that "defective installation itself cannot be considered an accident, and thus cannot be considered an occurrence under the policy." Rather, Nationwide's complaint against G&S "sought damages from the consequential risks [the fire] that stemmed from the work of G&S." *Cincinnati Ins. Cos. v. Motorists Mut. Ins. Co.*, 9th Dist. No. 13CA0016-M, 2014-Ohio-3864.

Limiting the definition of UM/UIM insureds to resident relatives is valid and enforceable and reference to "passengers" in a heading does not create ambiguity so as to extend UM/UIM coverage to all passengers.

Washington was injured by a hit and run driver while riding as a passenger in her friend Burse's vehicle. Burse had auto insurance, including UM/UIM coverage, with GEICO. Washington sued GEICO for UM/UIM coverage. The GEICO policy provided UM/UIM coverage "For You and Your Passengers For Injuries Caused By Uninsured and Hit-And-Run Motorists" but defined UM/UIM insured narrowly to include only named insureds and their resident relatives. The court found that the reference to "passengers" in the heading did not create an ambiguity that extended coverage to Washington. The court reasoned that: (1) Washington "has no standing to assert ambiguity in her favor"; (2) "a heading of a section of the policy is not the controlling language of a policy or contract"; (3) "a heading is merely directional and for the ease of the reader"; and (4) "[n]o terms or coverage is provided for in a heading." Rather, the court found that a "heading does no more than lead the reader to the information they are seeking; it is the content of the paragraphs below the heading that explains the information, which in this case, is UM/UIM coverage." Thus, because Washington did not qualify as a UM/UIM insured, she was afforded no coverage under the GEICO policy. *Washington v. GEICO Ins. Co.*, 8th Dist. No. 100527, 2014-Ohio-4375.

Insured can make claims against multiple policies for employee dishonesty spanning several years because each policy renewal constitutes a new contract.

Plaintiffs each sought coverage under successive policies issued by Auto-Owners for the embezzlement of substantial funds by their mutual employee over the course of several years. The trial court granted Auto-Owners' motion for summary judgment, finding that coverage for the embezzlement was limited to a single recovery under the current policy year. On appeal, the court noted that the issue of how employee dishonesty coverage operates when losses caused by embezzlement span multiple policy periods is a question of first impression in Ohio, and that other jurisdictions are split as to whether an insured could recover under multiple policies years or were limited to the most recent policy. Auto-Owners argued that provisions in its most recent policy limiting coverage to "loss that you sustain through acts committed or events occurring during the Policy Period" excluded coverage under prior policy years. The court disagreed and found that each renewal policy was a separate contract. However, the court did find that coverage under all but the most recent prior policy was excluded by a provision limiting coverage "only for covered loss discovered no later than one year from the end of the policy period." One of the plaintiffs also appealed on the basis that it felt entitled to an earlier policy's higher limit under a provision favoring the higher of the two limits when the loss spans more than one policy year. However, because the court found that coverage under that particular policy was excluded as loss discovered more than one year from the end of the policy period, the court found that the lower limit applied. The court also noted that there was nothing in the record as to whether an individual loss was actually attributable to acts that occurred during both policy terms. *E.J. Zeller, Inc. v. Auto Owners Ins. Co.*, 3rd Dist. No. 4-14-04, 2014-Ohio-4994.

Insurer and agent are not liable for declinations of liability coverage by a sophisticated insured.

Infocision Management Corporation generally required its employees to travel on company business in either rental or personal vehicles. Nonetheless, Infocision's non-owned auto liability coverage with Progressive was allowed to lapse in 2004 when Progressive increased the premium. Infocision then requested that its insurance agent, Sammy, a Farmers Insurance Exchange agent, find alternative coverage. Farmers refused the risk and both Sammy and Infocision's vice-president (a former insurance agent himself) found coverage available from other insurers but did not purchase that coverage because the premiums were "unacceptable." In 2007, an Infocision employee acting within the scope of employment struck and killed two pedestrians. Infocision settled the suit against it for $1,675,000. In 2009, Infocision filed suit against its agent and Farmers "alleging negligence, breach of fiduciary duty, and vicarious liability[.]" The trial court granted summary judgment to the insurance agent and Farmers. The court of appeals affirmed, holding that: (1) Infocision's claims were barred by its primary assumption of the known risk; (2) that Infocision's insurance agent, Sammy, owed it no fiduciary duty because there was no "special confidence and trust" due to Infocision's sophisticated nature; (3) that all claims were also barred by operation of the four-year statute of limitations in R.C. 2305.09 on professional negligence because the "Ohio Supreme Court has clearly established that even in discovery rule and delayed damages assertion scenarios, claims of professional negligence" are barred "four years from the time the disputed action was committed;" and (4) Farmers could have no vicarious liability for its agent's actions for that reason. *Infocision Mgmt. Corp. v. Michael D. Sammy Ins. Agency, Inc.*, 9th Dist. No. 26939, 2014-Ohio-4653.

***ADDITIONAL INSUREDS**, continued from page 1*

Be cognizant of applicable statutes, especially in construction claims. Many states, including Ohio, have so-called anti-indemnity statutes that apply to construction-related contracts. The Ohio statute, R.C. 2305.31, basically precludes indemnity for an indemnitee's own negligence. The Supreme Court of Ohio in *Kendall v. U.S. Dismantling Co.*, 20 Ohio St.3d 61 (1985), construed the statute and held:

> R.C. 2305.31 prohibits indemnity agreements, in the construction-related contracts described therein, whereby the promisor agrees to indemnify the promisee for damages caused by or resulting from the negligence of the promisee, regardless of whether such negligence is sole or concurrent.

Thus, a general contractor may not force a subcontractor to indemnify the general contractor for the negligence of the general contractor.

Continued on page 10

Continued from page 10

If the claimant is an employee of an insured, consider any immunity. If a claimant who is an employee was injured in the course and scope of his employment and is eligible to receive workers' compensation benefits, the policyholder who employed the claimant may not owe indemnity. R.C. 4123.74 precludes indemnity against an employer, unless there is an express waiver of its workers' compensation immunity. In interpreting that statute the Supreme Court of Ohio in *Kendall v. U.S. Dismantling Co.*, 20 Ohio St.3d 61 (1985), held:

> An employer in compliance with the workers' compensation laws of this state does not surrender its statutory and constitutional immunity from suits arising out of employment absent an express and specific waiver of that immunity. A general agreement of indemnity with a third party which does not specifically express the employer's intent to waive this particular immunity is ineffective for that purpose.

Ascertain how the courts interpret the AI endorsement. In many states, AI endorsements are given broad effect. Ohio, however, is not one of those states. In this jurisdiction, if the AI endorsement describes the party seeking AI status as an insured *only* with respect to the party's liability arising out of acts or omissions of the named insured, the coverage determination may hinge on whether the claimed liability is only vicarious. Although the Supreme Court of Ohio has never addressed the issue, Ohio appellate courts have consistently construed the language found in AI endorsements to afford coverage only for *vicarious liability* the additional insured may have for the named insured's acts or omissions. See, e.g., *City of Cleveland v. Vandra Bros. Construction Co., Inc.*, 192 Ohio App. 3d 298, 304, 2011-Ohio-821, P26 (8th Dist.); *Boatwright v. Penn-Ohio Logistics*, 2011-Ohio-1006, P31 (7th Dist.); *Currier v. Penn-Ohio Logistics*, 186 Ohio App.3d 249, 257, 2010-Ohio-195, P31 (11th Dist.); *Tingler v. C.J. Mahan Construction Co.*, 2007-Ohio-5463, P37 (5th Dist.); *C.J. Mahan Construction Co. v. Mohawk Re-Bar Services, Inc.*, 2005-Ohio-5427, P81 (5th Dist.); *Sprouse v. Kall*, 2004-Ohio-353, P9 (8th Dist.); and *Davis v. LTV Steel Co., Inc.*, 128 Ohio App. 3d 733, 736-37 (11th Dist. 1998).

Set forth your coverage position in writing. After the foregoing issues are considered, an insurer should set forth its coverage position in writing. That position should explain the basis for the coverage determination and should invite a response if the recipient disagrees. Incorporating by reference the entire policy of insurance usually is wise; doing so ensures that no pertinent policy language is omitted. Of course, insurers should always remain open to reviewing a coverage position if the facts or law are other than the insurer may believe.

Gallagher Sharp Detroit

We have vacated our Livonia, Michigan, offices and relocated to downtown Detroit. We are pleased to welcome:

Partner Paul D. Galea
Admitted in both Michigan and Ohio, Paul's practice primarily involves defending commercial shipping companies, marinas and private pleasure boat owners and operators in all forms of maritime matters. Other substantive areas of Paul's law practice are insurance coverage, professional liability, asbestos and toxic tort, and ecclesiastical law.
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David will join our Michigan office this month. His experience revolves around the defense of aviation and insurance litigation for American and London insurers. He represents Part 121 carriers, Part 135 operators, Part 91 aircraft owners, airports, and pilots of all ratings. He is an adjunct professor at Eastern Michigan University teaching Aviation and Insurance Law at the School of Aviation Technology.
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