URB INSIDER

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Talk of Terrorism Extension

There has been much talk in Congress about extending the federal terrorism reinsurance program. The discussion does not seem to be ***if*** this will be done, but ***how*** it will be done.

Congress officially has a bill it introduced in June to reauthorize the federal terrorism reinsurance program known as the Terrorism Risk Insurance Revision and Extension Act of 2007 (TRIREA). The bill would extend the Terrorism Risk Insurance Act (TRIA) for 10 years. Its proponents contend that it would encourage the development of a private market for terrorism risk insurance.

The provisions of the proposal include that the extension will continue current co-payments and deductibles for terrorism acts for ten years, that it will expand TRIA's make available requirement to include NBCR coverage, that it will change TRIA's definition of terrorism to include domestic terrorism, and it will set the program trigger at $50 million. It will add group life insurance to the lines of insurance for which terrorism coverage must be made available but it decreases deductibles and triggers for areas previously impacted by a significant terrorist attack, and it will continue to require studies of the development of a private market for terrorism risk insurance.

A hearing was held to discuss the bill on June 21, 2007.

In response to the proposal, the Treasury issued a statement indicating that it could not support the legislation for a ten-year program, saying that the government's support should be scaled back to let private insurers take a bigger role. Treasury assistant secretary for financial institutions, David Nason has said that private insurers have shown they can shoulder more terrorism risks since Congress first passed TRIA. He indicated the program should be curtailed further than it was when it was extended in 2005.

Eric Dinallo, Superintendent of Insurance in New York, testified before a hearing of the House Financial Services subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises.

In his remarks, Dinallo stated that it is important that the bill promote as much private sector involvement as possible to spread risk, to take advantage of risk assessment and claims payment expertise, and because that approach encourages businesses to as much as possible take mitigation steps. He went on to say that it is primarily the government's job to prevent terrorists attacks. But just as clearly, to succeed, we must have as much private sector cooperation as possible.

Dinallo reminded legislators that terrorists have already hit New York City twice and that New York is suffering from the impact of those attacks. On duration, Dinallo urged 15 years, he discussed the concept of a reset regarding premiums and the added coverage for NBCR.

We will keep you posted on the proposed legislation.◆

From the Court of Appeals

Labor Law Protections Discussed

Laurence Broggy, (plaintiff), was employed by International Service System, Inc. (ISS), and reported to work at 75 Rockefeller Plaza, in New York City. ISS (subsequently renamed One-Source Facility Services, Inc.), is in the business of providing cleaning and maintenance services to commercial building owners and managers, and plaintiff's supervisor had instructed him to wash the inside of 75 Rockefeller Plaza's eighth-floor windows. He and his two co-workers, who were equipped with safety belts for exterior window washing, then began to clean the windows in the eighth-floor offices, some of which were eight to ten feet above the floor.

Plaintiff and his co-workers eventually arrived at Room 810, where three of the windows were aligned "in a row" on the wall opposite the doorway. There were two mahogany desks in Room 810. One of them was pushed with its back flush against the leftmost window, extending laterally "[a] couple of feet" beyond the window towards the corner of the office. A gallery — a 1-inch thick and 4-inch high protecting edge, raised above the desktop's surface — bordered its back, while the desktop itself was level with the window's sill. The three men considered moving this desk, but after "put[ting] [their] hands on" it, concluded that "'[w]e can't move this. It's too big.'"

Protected by their safety belts, plaintiff's co-workers began to clean the exterior surfaces of Room 810's windows, gaining access by stepping through a window onto an outside ledge. Meanwhile, plaintiff clambered up on top of the desk and began to clean the interior surface of the leftmost window, starting at the upper

Plaintiff was aware of the gallery. After plaintiff completed cleaning the glass in the window's top sash, he noticed that one of his co-workers was signaling that he wanted back into the office from the outside. Standing with his left foot on the windowsill and his right foot on the desktop, plaintiff lifted the bottom sash and moved his hands away, expecting the window to remain open. Instead, the bottom sash suddenly "slammed down," and plaintiff "tried to get [his] left foot out of the way" by moving it from the windowsill "[t]owards the desk." When he did this, his left instep "[came] into contact with" the gallery, causing him to lose his balance, fall backwards and hit his back first on the desktop and then the floor.

On February 15, 2002, plaintiff and his wife sued various parties identified as landlords, lessors, lessees or managers of 75 Rockefeller Plaza, alleging violations of Labor Law §§200, 202, 240(1) and 241(6). Plaintiffs subsequently moved for partial summary judgment on liability under Labor Law §240(1) because plaintiff was "injured when he fell from the windowsill which was being used as an elevated platform or scaffold from which to perform commercial window cleaning." Plaintiffs faulted defendants for failing to provide plaintiff with the safety devices necessary "to overcome the elevation differential of approximately four feet between the floor and the window so as to perform his task safely." Defendants opposed the motion, arguing that there were questions of fact as to whether cleaning the interior of a commercial building's windows was covered by, and whether plaintiff's accident was proximately caused by the absence of any safety device listed in the statute. Defendants also moved to dismiss plaintiffs' remaining Labor Law §240(1) Labor Law claims. Supreme Court granted plaintiffs' motion for partial summary judgment and defendants' motion to dismiss, and defendants appealed.

The Appellate Division subsequently reversed Supreme Court, denied plaintiffs' motion for partial summary judgment on liability and, upon searching the record, granted summary judgment to defendants dismissing plaintiffs' Labor Law §240(1) claim and the complaint. The Appellate Division took the position that section 240(1)'s protections are limited to cleaning that is related to building construction, demolition and repair work; or, if not carried out at a construction site, is incidental to activities making a significant physical change to the premises, citing our decisions in Joblon v. Solow, 91 NY2d 457 [1998] and Panek v. County of Albany, 99 NY2d 452 [2003]. As an alternative ground, the Appellate Division concluded that plaintiffs had "failed to establish the need for any safety device affording protection from the effects of gravity in connection with the interior window cleaning at issue. [They] do not allege that any additional device, such as a ladder, was needed to permit the interior surfaces of the windows to be safely cleaned; nor do they allege that cleaning could not have been successfully performed from the floor level using the wand and squeegee supplied. (The record is devoid of evidence concerning the length of the handles on these tools.) Thus, there is no evidence from which this Court could conclude that the injured plaintiff was exposed to an elevation-related risk protected by the statute" (30 AD3d 204, 206-207 [1st Dept] [citations omitted]).

The Court of Appeals granted leave to appeal and affirmed the case based on the Appellate Division rationale. Laurence Broggy et al. v. Rockefeller Group, Inc., et al., 2007 NY Slip Op 05775.◆

CASE BRIEFS

Knowledge = Liability

Plaintiffs' son, Brent (born in 1991), was a frequent guest at the home of defendants Daniel Wheeler and Colleen Wheeler (hereinafter collectively referred to as defendants) until July 2003, when he was attacked by defendants' dog. When Brent and Daniel Wheeler attempted to throw Wheeler's young daughter into a pool, the dog evidently knocked Brent down and bit him on the right side of his face around the eye, requiring an initial nine-day hospital stay and numerous surgeries since that time. Brent still sees "double" in the peripheral vision of his right eye and experiences abnormal swelling above the eye.

In 2005, plaintiffs commenced this action. Plaintiffs moved for partial summary judgment on the issue of liability, and defendants and their landlords cross-moved for summary judgment dismissing the complaint upon the ground that they had no knowledge of the dog's vicious propensities. Supreme Court granted the landlords summary judgment, but otherwise denied the motions, finding questions of fact. Plaintiffs and defendants cross-appeal from the denial of their motions. We affirm. It has long been the rule that "the owner of a domestic animal who either knows or should have known of that animal's vicious propensities will be held liable for the harm the animal causes as a result of those propensities" (Collier v. Zambito, 1 NY3d 444, 446 [2004]; *see* Bard v. Jahnke, 6 NY3d 592, 596-597 [2006]). Seyboldt v. Wheeler, 2007 NY

Arson as an Affirmative Defense

Plaintiff owned a home in the Town of Sand Lake, Rensselaer County that was insured by a homeowners insurance policy issued by defendant. On August 8, 2000, the property was completely destroyed by fire. Plaintiff submitted a proof of loss statement to defendant seeking to recover $240,000 in insurance proceeds. Defendant paid the balance of the mortgage on the property (approximately $92,000), but otherwise denied plaintiff's claim. When plaintiff then commenced this action to compel defendant to cover his loss, defendant asserted the affirmative defense of arson. A nonjury trial was thereafter held after which Supreme Court dismissed the complaint and awarded costs and disbursements to defendant. On plaintiff's appeal, we now affirm.

In 2000 plaintiff decided to move to Florida to live full time. In the week preceding the fire, plaintiff appeared personally at his insurance agent's office and for the first time in memory of his agent paid his monthly homeowners insurance premium on time. He also held a moving sale, packed up some of his furniture and personal property in a moving truck, and placed his home for sale with a local realtor at a list price of $120,000. He planned to leave the next day. At 5:45 that evening area fire departments responded to a fire call at plaintiff's residence.

Both the county fire investigator and an investigator hired by defendant concluded the cause of the fire was combustible flammable liquid poured on a mattress in the upstairs bedroom and hallway.

To establish the affirmative defense of arson, it was defendant's burden to demonstrate by clear and convincing evidence that plaintiff intentionally set the fire *see* (Chenango Mut. Ins. Co. v. Charles, 235 AD2d 667, 668 [1997]; Ashline v. Genesee Patrons Coop. Ins. Co., 224 AD2d 847, 848 [1996]). "[D]irect proof of arson is seldom available and, therefore, can be established in civil cases by circumstantial evidence" (Weed v. American Home Assur. Co., 91 AD2d 750, 751 [1982]; *see* Phillips v. State Farm Fire & Cas. Co., 225 AD2d 457, 457 [1996]). Here, the record amply supports Supreme Court's conclusion

Elements of a Negligence Case

Torts are civil wrongs for which there is a remedy. Torts can be intentional, negligent or strict liability in nature. Tort law establishes standards of care that people must show to one another in everyday life.

At the center of most tort discussions is negligence. Negligence is the behavior that falls below the acceptable standard of care.

Negligence applies to a variety of wrongful conduct. Regardless of the negligent tort, four elements must be proved for plaintiff to prevail in their cause of action. They are duty, breach of duty, causation (in fact and proximate) and damages.

A person ordinarily has a duty to exercise reasonable care under the circumstances regarding foreseeable risks of harm that may arise as a result of the person's conduct. This is the applicable standard of care necessary to avoid liability for negligence.

As a general matter, there is no duty to act when the actor has not created the harm, except when there is a special relationship, for example, that of protector, parent/child, husband/wife, companion on a social venture or when the duty is voluntarily assumed. Owners and occupiers of land may have a duty and there may be in some circumstances, a duty to control the conduct of others.

The exercise of reasonable care is judged by an objective test, not what the actor did or intended to do, but whether the actor's conduct was that of a reasonably prudent or careful person placed in the same or similar circumstances.

Breach of duty occurs when the actor's conduct created a foreseeable chance of harm or the actor's conduct created an unreasonable risk of harm. In doing so, the actor has not met their obligation of the exercise of reasonable care. It can be instructive to utilize a risk utility analysis in determining if duty is breached. Such analysis was utilized by Judge Learned Hand which has been described as balancing the burden of undertaking a precaution as it equals the cost and effort of feasible, safer alternative conduct that does not unduly impair the utility of the activity. The actor has the burden of proving that caution was undertaken.

Both causation in fact and proximate cause must be proved to prevail in a negligence cause of action. With causation in fact, if the harm would not have occurred without the wrongful act, then the act is the cause in fact of the other party's injury. The traditional mechanism for actual causation is to apply the "but for" test. This means that for the actor to be held liable, the other party must establish that but for the actor's wrongful act, the other party would not have been injured. However, some courts have applied the "substantial factor" test which imposes liability when the actor's wrong is a substantial factor in causing the other party's injury.

To prove proximate cause, there must be a close enough connection between the wrong caused by the actor and the injury. Foreseeability determines if the harm was reasonably able to be predicted. The extent of injury to the other party need not be foreseeable. It is well settled that the actor takes the party who is harmed as the actor finds them.

In New York courts apply a particular methodology to causation in which a "substantial factor" test is used and proximate cause is determined.

The wronged party must suffer a legally recognized harm known as damages. Damages can be compensatory in nature for out of pocket expenses, pain and suffering, and lost wages, or punitive in nature. All four elements must be proven to recover. ◆

Wrap Up at the Legislature

Before the Legislature ended its session in late June, several bills passed both houses that are of interest to insurers.

- NYPIUA—1 Year Extender
- 2% Auto Cancellation/Non-Renewal, Commercial Flex File and Use—1 Year Extender
- Prejudicial Notice/Direct Action

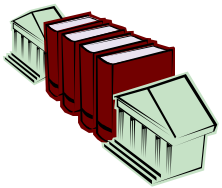
The Prejudicial Notice/Direct Action bill passed by both houses requires an insurer's denial for late notice must show "material prejudice" and allows a direct action against insurers before the plaintiff has obtained a judgment against the underlying defendant.

- Faxes and Electronic Commencement of Action

This is a five year pilot program for electronic filings which is being expanded in both geographic scope and the types of filings. Electronic filing will now be included for medical payment claims against No Fault insurers.

- Credit Scoring

This prohibits any assignment of a negative implication to a credit score as a result of inquiries. ◆



Watercraft...Riding the Wave for Coverage

As temperatures rise each summer, owners of boats and other watercraft dream of skimming the waves or spending tranquil days drifting in the sun. The last thing most consumers think of is the need for insurance. But insurance on watercraft is essential since ownership of this type of property creates an exposure not only to the boat but for bodily injury or property damage caused by the watercraft.

Most homeowners policies provide a small amount of coverage for watercraft and may provide limited liability coverage in certain circumstances. The URB forms provide $500 coverage on watercraft as specified in the ML-20. The specific language applicable is set forth below. With respect to liability claims, there is some coverage for watercraft as outlined in the language set forth below excerpted from the ML-9 1/87.

Excerpted from ML-20 Ed. 6/99:

5. **Limitations on Certain Property**- These special limits do not increase the Coverage C amount of insurance. The special limit for each category below is the total limit per ***occurrence*** for all property in that category:

e.$500 on watercraft including their trailers, equipment, accessories and outboard motors;

Excerpted from ML-9 Ed. 1/87:

6. ***Watercraft***

a. ***We*** pay for ***bodily injury*** or ***property damage*** resulting from the maintenance, use, loading or unloading of watercraft:

1)while on the ***insured premises***; or

2)not owned by or rented to an ***insured*** if the ***bodily injury*** or ***property damage*** results from the activities of an ***insured***.

b. ***We*** pay for ***bodily injury*** and ***property damage*** resulting from the maintenance, use, loading or unloading of:

1) watercraft owned by or rented to any ***insured*** and powered by inboard or inboard/outboard motors totaling 50 horsepower or less; or

2) sailing vessels with or without auxiliary power owned by or rented to any ***insured*** and less than 26 feet in overall length.

c. ***We*** pay for ***bodily injury*** and ***property damage*** resulting from the maintenance, use, loading or unloading of watercraft powered by outboard motors totaling 50 horsepower or less.

d.Under the following circumstances, ***we*** pay for ***bodily injury*** or ***property damage*** resulting from the maintenance, use, loading or unloading of watercraft powered by outboard motors totaling more than 50 horsepower:

1) the motors are insured for Personal Liability coverage and shown on the Declarations or any endorsement;

2) the motors are reported to ***us*** and Personal Liability coverage is requested within 45 days after acquisition by any ***insured***; or

3) the motors are not owned by any ***insured***.

As a practical matter, there are a number of issues to be discussed about how coverage can apply to a watercraft loss, in particular, liability cases can be most perplexing. Note that the definition of ***Insured*** in the policy states the following: b. Under Personal Liability and Medical Payments to Others coverages only, ***insured*** also includes:

1) any person or organization legally responsible for a watercraft or animal owned by an ***insured*** and to which this insurance applies; (This does not include anyone using or having custody of the watercraft or animal in the course of any ***business*** or without

Recreational watercraft are typically divided into three categories such as boats which are up to 25'11" in length, yachts which are 26' or longer and personal watercraft such jet skis, waverunners and other personal watercraft.

Watercraft is not specifically defined in these URB policy forms. The limitations with respect to horsepower and size do provide some guidance in the forms about what watercraft is and is not intended to be covered.

Critical to the inquiry of coverage under these forms is to obtain the horsepower of the watercraft involved. A variety of horsepower is available from various manufacturers. Even with personal watercraft, examples include jet skis that run at 85 to 250 horsepower and a waverunner that runs at 170 horsepower.

In the event of a claim, a thorough investigation is critical in these types of accidents just as it is in any liability claim. The operator of the boat should always obtain names and addresses of the parties in the boat(s), including passenger(s) and witness(es), the name of any other boat involved, the registration number, the insurance company name and applicable policy number. The operator may be required to file a boating accident report with the coast guard and/or other authorities. All of this information should be obtained by the insurer in the event of a claim.

New York has a number of statutes applicable to boating, contained in New York's Navigation Law, for example, Reckless operation of a vessel; speed (NY CLS Nav §45); Regulations of personal watercraft and specialty prop craft (NY CLS §73-a), Operator (NY CLS §49) and Boating Safety Certificate (NY CLS §78). ◆

SCHOLASTICALLY SPEAKING...

BY PROFESSOR I.M. SMART

Discussing The Issue of Sudden and Accidental Pollution

One major issue in commercial insurance litigation has been over the sudden and accidental exception to the pollution exclusion in general liability policies. There are environmental cases in the commercial arena that may provide some guidance with respect to the outcome of a personal lines case were it to be presented on the same basis.

One case decided by the New York Court of Appeals that may be instructive on the subject is Northville Industries Corporation v. National Union Fire Insurance Company of Pittsburgh, Pa., 89 NY2d 621. In this case, the plaintiff insured filed an action to establish defendant insurers' obligation to defend and indemnify the insured with regard to actions filed against the insured in relation to a release of gasoline into the groundwater. The Appellate Division of Supreme Court held that the insurers had no obligation to defend or indemnify. The insured appealed.

The insured was engaged in the bulk storage, distribution, and sale of petroleum products. All of the insured's comprehensive liability policies contained a pollution exclusion clause barring coverage for bodily injury or property damage arising out of the discharge of pollutants, which did not apply if such discharge was sudden and accidental. There was a release of gasoline from the insured's facilities into the groundwater. Owners of the affected neighboring properties brought suit. The parties agreed that the discharges from both facilities were accidental. However, the court found that the insurers were not obligated to defend or indemnify the insured because the allegations regarding the temporal aspects of the leakages actually described them as having occurred continuously over a period of many years.

The Court of Appeals affirmed the lower court's order. In this case, the Court of Appeals discussed that they held in Technicon Elecs. Corp. v. American Home Assur. Co. (74 NY2d 66, *rearg dismissed* 74 NY2d 843, *rearg denied* 74 NY2d 893), that for the sudden and accidental discharge exception to the exclusion of pollution coverage to apply, *both* contingencies included in the exception had to be satisfied.

As other courts have aptly observed, "[w]e cannot reasonably call 'sudden' a process that occurs slowly and incrementally over a relatively long time, no matter how unexpected or unintended the process" (Shell Oil Co. v. Winterthur Swiss Ins. Co., 12 Cal App 4th 715, 754, 15 Cal Rptr 2d 815, 841).

The focus in determining whether the temporally sudden discharge requirement is met, for the purpose of nullifying the pollution coverage exclusion, is on the initial release of the pollutant, not on the length of time the discharge remains undiscovered, nor the length of time that damage to the environment continued as a result of the discharge, nor on the timespan of the eventual dispersal of the discharged pollutant in the environment. Northville Industries, *supra*, *citing*, Hartford Acc. & Indem. Co. v. U.S. Fid. & Guar. Co., 962 F.2d at 1491; Johnson & Co. v. Aetna Cas. & Sur. Co., 933 F. 2d 66, 72; Lumbermens Mut. Cas. Co. v. Belleville Indus., 407 Mass 675, 681, 555 NE 2d 568, 572; Shell Oil Co. v. Winterthur Swiss Ins. Co., 12 Cal App 4th, at 754-757, 15 Cal Rptr 2d, at 841-842.

Once an insurer has satisfied its burden of establishing that the underlying complaint alleges damages attributable to the discharge or release of a pollutant into the environment, the burden shifts to the insured to demonstrate a reasonable interpretation of the underlying complaint potentially bringing the claims within the sudden and accidental discharge exception to exclusion of pollution coverage, or to show that extrinsic evidence exists that the discharge was in fact sudden and accidental. Shifting the burden to establish the exception conforms with an insured's general duty to establish coverage where it would otherwise not exist, provides the insured with an incentive to strive for early detection that it is releasing pollutants into the environment and appropriately places the burden of proof on the party having the better and earlier access to the actual facts and circumstances surrounding the discharge. Northville Industries, *supra*, *citing*, Borg-Warner Corp. v. Insurance Co., 174 AD2d 24, 31, *lv denied* 80 NY2d 753, Aeroquip Corp. v. Aetna Cas. & Sur. Co., 26 F3d 893, 894-895 [9th Cir]; Northern Ins. Co. v. Aardvark Assocs., 942 F2d 189, 195 [3rd Cir]. ◆

From the Insurance Department

The New York State Insurance Department Office of General Counsel has recently issued a number of opinions that may be of interest to property casualty insurance companies. Pertinent information excerpted from the opinions appears below for your information.

On June 1, 2007 the Office of General Counsel issued an opinion entitled "Non-payment Cancellation Based on Dishonored Premium Checks in Sweep Accounts." The question presented is after an insured's premium check that was deposited in an insurance producer's premium sweep account was dishonored and the insurer already had withdrawn funds representing the premium from the producer's account, must an insurer reimburse the insurance producer for the premium, or may the insurer either issue a bill directly to the insured for the premium or issue a notice of cancellation for non-payment of the premium if the insured fails to pay the bill?

The conclusion stated in the opinion is that except with respect to an assigned risk automobile insurance policy, an insurer need not reimburse the insurance producer for the premium, and may not either issue a bill directly to the insured for the premium or issue a notice of cancellation for non-payment of the premium, when an insured fails to pay the bill after the insured's premium check that was deposited in an insurance producer's premium sweep account was dishonored, and the insurer already had withdrawn funds representing the premium from the producer's account.

On June 4, 2007, the Office of General Counsel issued an opinion entitled "Verbal Communication About Non-renewal of Homeowner's Policy" in which the question presented is may an insurance agent verbally communicate to an insured, more than 60 days before the expiration date of a homeowner's policy, that the insurer intends to non-renew the policy?

The conclusion reached is that an insurance agent is not prohibited from verbally communicating to an insured, more than 60 days before a homeowner's policy's expiration date, that the insurer will not renew the policy. Such communication, however, does not effectuate non-renewal. Moreover, a homeowner's policy may be non-renewed only at the end of its three-year required policy period, unless the non-renewal is based upon a ground for which the insurer could have canceled the policy.

On June 7, 2007 The Office of General Counsel issued an opinion entitled "Fees Charged by a Chiropractor; Insurance Fraud?" The question presented is if a chiropractor were to charge a lower fee for services to "non-insurance" patients - that is, patients without insurance or whose contractual benefits under an insurance policy have been exhausted - than to patients whose cost of services is covered by insurance, could the chiropractor's conduct alone constitute insurance fraud?

The conclusion reached in the opinion is no, if a chiropractor charges a lower fee to non-insurance patients who pay cash, that activity would not constitute insurance fraud, because neither the chiropractor nor the insured would submit any claim for services to an insurer, self-insurer, purported insurer, or any agent thereof. However, if a chiropractor submits a claim to an insurer for an insured patient, or issues a bill to an insured patient for services knowing that the bill will be presented to the insurer, then the chiropractor would be wise to fully disclose to the insurer that it charges non-insurance patients who pay cash a lower fee.

On June 7, 2007, The Office of General Counsel issued an opinion entitled "Section 3426 Non-Renewals and Cancellations" in which the questions presented are may a notice of cancellation for nonpayment of premium terminate an expiring commercial risk insurance policy when a notice of renewal has already been mailed to the insured, and does a valid cancellation notice sent after a renewal notice supersede the policy renewal, even if the cancellation is effective after the renewal policy would have gone into force and once it issues a renewal notice, may a commercial risk insurer subsequently issue a non-renewal notice after finding out that the insured did not comply with "mandatory recommendations" that the insurer made in a separate letter.

The conclusions reached are that, yes, in general, a valid nonpayment cancellation terminates an expiring policy and supersedes a notice of renewal, provided that the insurer has complied with the statutory requirements of Insurance Law § 3426 (McKinney 2007). Also presented in the conclusions is that yes, if a valid cancellation notice has been mailed after a renewal notice, the cancellation notice supersedes the renewal notice, even if the cancellation is effective after the renewal policy period would have gone into force. Lastly, it is included in the conclusions that no, under the circumstances discussed below, a notice of non-renewal may not supersede an unconditional renewal notice that has been sent to the insured. Where policyholders receive renewals with separate "recommendations," and a warning from the insurer that the policy will be non-renewed if the insured does not satisfy the

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Case Notes from Around the Nation

Louisiana Arguments will be heard before the 5th U.S. Circuit Court of Appeals in Louisiana on August 6 to determine whether Nationwide Insurance should be required to cover storm surge damage to a couple's home that occurred as a result of Hurricane Katrina.

Nationwide appealed a 2006 ruling by U.S. District Judge L.T. Senter that held Paul and Julie Leonard could not collect damages from storm surged but could be compensated for damage that they can prove was caused by high winds.◆

Pennsylvania According to her son, Francis Ounan, Margaret Boyle allegedly died on November 5, 2005 from head injuries she sustained when she suffered a fall at a nursing home where she had been admitted for treatment of Alzheimer's disease the day before. The facility knew at the time of her admission that the disease put her at a high risk of wandering.

Ounan filed suit against Sunrise Senior Living Services, the owner of the nursing home. A federal judge has approved the $750,000 settlement to Boyle's estate. ◆

Connecticut Big Game Capital LLC was sued on negligence and other theories by Stephen Parrotte and Brian L. Marquiss who claimed they sustained injuries and damages as a result of being sold french fries by a concessions worker at a Hagerstown Suns baseball game. According to plaintiffs, they suffered permanent injuries to their mouths, throats and digestive tracts from ingesting sodium hydroxide.

The case was settled. Big Game Capital LLC made an admission of liability for the acts of its employee pouring the caustic substance on the fries from an unmarked plastic jug. ◆