



# URB INSIDER

A Quarterly Publication of the Underwriters Rating Board

## At The Supreme Court

### Case Notes

September, 2010

Volume 8, Issue 3

Come October, there will be another U.S. Supreme Court Term.

On Monday, September 27th, the justices agreed to reconsider an appeals court ruling against Anna Nicole Smith's estate in a 15-year old battle over the fortune of her deceased husband, J. Howard Marshall. Marshall's will left almost all his money to his son and nothing to Smith. Smith's estate challenged the will and lost.

The High Court on Tuesday, September 28th agreed to a request from the Obama administration to take

up a case involving claims made by telecommunications giant AT&T to keep secret information that was gathered by the Federal Communications Commission as a result of an investigation.

This is a freedom of information dispute over whether corporations may assert personal privacy interests in order to prevent the government from releasing documents about the company.

There are also a number of other cases on the High Court docket. ♦

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## Around The Country

### Case Headlines

- **VERMONT** – The Vermont Supreme Court recently ruled that the state cannot collect from the owners of a property located in downtown Barre that was polluted by a dry cleaning shop formerly located there. The justices upheld a lower court's decision to punish the state because it delayed disclosing evidence it had against the bank it had sued, which had owned the property for seven months after a foreclosure in the late 1990s.
- **CALIFORNIA**– The California Supreme Court recently ruled that plaintiffs may not seek treble damages under the state's Unfair Competition Law. The remedies available will be limited to injunction and restitution. ♦

**Editor's Note:** *The material contained in this publication is provided as information only, and is not intended to be construed or relied upon as legal advice in any manner. Always consult an attorney with the particular facts of a case before taking any action. The material contained in this publication was not necessarily prepared by an attorney admitted to practice in the jurisdiction of materials contained in the publication.*

# NY Cases Defense Summary Judgment Granted

**Editor's Note:** Below is the Opinion of Supreme Court, Appellate Division, Second Department which upheld the grant of a summary judgment where defendants' proved their prima facie entitlement. The defendants' demonstrated there were no product defects in the carrier plaintiff bought for her baby.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Agate, J.), dated June 3, 2009, which granted the motion of the defendants EvenFlo Company, Inc., and Toys "R" Us for summary judgment dismissing the complaint insofar as asserted against them.

Ordered that the order is affirmed, with costs.

The plaintiff, the mother of the subject infant (hereinafter Eternity), bought an EvenFlo Snugli Soft Baby Carrier (hereinafter the carrier) from a Toys "R" Us store. The instructions told the user to "Buckle both side entry buckles securely. To buckle the side entry buckles, place buckle under lip and push down until center tab snaps into place. You will hear a click." The plaintiff used the carrier to carry Eternity, born on December 30, 2002, approximately five times over the course of a month, without incident. On February 2, 2003, the plaintiff strapped the carrier onto the front of her body, then sat down to place Eternity in the carrier. The plaintiff buckled, or "snapped," both sides closed and both buckles made loud snapping noises. She then pulled on both of the buckles, making sure that they were secure. The plaintiff then stood up and started walking, but the left buckle on the carrier opened and Eternity fell, allegedly sustaining injuries.

Thereafter, the plaintiff, individu-

ally and on behalf of Eternity, commenced this action against, among others, EvenFlo Company, Inc., and Toys "R" Us (hereinafter together the defendants), alleging that the carrier was defectively manufactured and/or designed, and that they failed to warn her regarding the use of the carrier. The defendants moved for summary judgment dismissing the complaint insofar as asserted against them, arguing that the carrier was not defectively designed or manufactured and that the warnings were sufficient. The Supreme Court granted the defendants' motion. We affirm.



There are three distinct claims for strict products liability: "(1) a mistake in manufacturing . . . (2) an improper design . . . or (3) an inadequate or absent warning for the use of the product" (*Lancaster Silo & Block Co. v Northern Propane Gas Co.*, 75 AD2d 55, 61-62 [1980]; see *Sukljan v Ross & Son Co.*, 69 NY2d 89 [1986]; *Robinson v Reed-Prentice Div. of Package Mach. Co.*, 49 NY2d 471, 478-479 [1980]). Here, the defendants established, prima facie, their entitlement to judgment as a matter of law. In support of their motion, the defendants submitted, inter alia, the

deposition testimony of EvenFlo's director of technical services, Charles Roos, who also was a mechanical engineer. Roos testified that, among other things, he examined the carrier after the accident and found it to be working properly. Roos further testified that the carrier met or exceeded all applicable laws, regulations, and industry standards. The defendants also submitted the plaintiff's deposition testimony wherein she averred that she had read the carrier's instruction manual which directed users to ensure that the carrier's buckles were secured prior to use. Thus, the evidence submitted by the defendants established, prima facie, that the carrier was not defectively manufactured or designed, and that the defendants had not failed to warn the plaintiff regarding the use of the carrier.

In opposition to the defendants' prima facie showing, the plaintiff failed to raise a triable issue of fact (see generally *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). The plaintiff submitted an affidavit of an engineer in the field of accident reconstruction, biomechanics, and mechanical engineering, and an affidavit of a board-certified human factors psychologist. However, neither expert presented evidence that he had any practical experience with, or personal knowledge of, baby carriers such as the one at issue here, and neither expert demonstrated such personal knowledge or experience with baby carrier design or manufacture in general. Accordingly, the affidavits submitted by the plaintiff were insufficient to raise a triable issue of fact (see *O'Boy v. Mort coach Indus., Inc.*, 39AD 3d 512, 513-514 [2007]).

The plaintiff's remaining contentions are without merit. *Rinaldi v EvenFlo Co., Inc.*, 2010 NY Slip Op 05993.♦

# Accord & Satisfaction Precludes Added Claim

**Editor's Note:** Below is the Opinion of Supreme Court, Appellate Division, Third Department which held that the doctrine of accord and satisfaction barred the claim for an additional ACV payment after a fire destroyed plaintiffs' inn.

Cross appeals from an order of the Supreme Court (Garry, J.), entered March 11, 2009 in Tompkins County, which, among other things, partially granted defendant's cross motion for summary judgment dismissing the complaint.

Plaintiffs Charles Rosemann and Sheryl Rosemann are the sole shareholders and owners of plaintiff Rose Inn of Ithaca, Inc., which operated a country inn. After a substantial portion of the inn was destroyed in a 2004 fire, plaintiffs made a claim under their insurance policy, which was issued by defendant. Because plaintiffs decided not to rebuild the inn, the policy entitled them to the actual cash value of the loss.

The claim negotiations were conducted on plaintiffs' behalf by Charles Rosemann (hereinafter Rosemann), who had decades of experience in the hospitality industry and had negotiated a prior insurance claim involving a fire at the inn. In that role, Rosemann dealt regularly with the independent adjuster to assess the degree of damage to the inn and, after receiving the preliminary estimate of the damage, contended that over 200 items in it required revision. Rosemann raised a number of issues with regard to the revised estimate as well, and his efforts resulted in a final estimate of property damage that was almost \$250,000 higher than the preliminary one. He also negotiated with defendant, rejecting multiple

settlement offers and arguing that the extant portion of the inn was a total loss.<sup>1</sup>

After several months of these extensive discussions, the claim was settled for the actual cash value of those parts of the inn that had been destroyed, leaving unresolved only the issue of whether plaintiffs were entitled to replacement costs for the surviving portion of the inn.



Plaintiffs thereafter commenced this action asserting two breach of contract claims, the first alleging that defendant omitted items from its calculation of actual cash value, and the second contending that defendant should have determined that the surviving portion of the inn was a total loss and awarded plaintiffs its actual cash value as well. Defendant answered and raised the affirmative defense of accord and satisfaction. Plaintiffs subsequently moved for partial summary judgment on the first claim insofar as it related to architectural and engineering fees omitted from the calculation of actual cash value, and defendant cross-moved for summary judgment dismissing the complaint. Supreme Court granted plaintiffs' motion as to the issue of liability on the first claim, and granted defendant's

motion as to the issue of liability on the first claim, and granted defendant's cross motion to the extent of dismissing the second claim. Defendant appeals.<sup>2</sup>

We agree with defendant that the first claim should have been dismissed in its entirety, and modify Supreme Court's order accordingly. As defendant asserts, an accord and satisfaction is effected when "the parties . . . enter into a new contract wherein they agree that a stipulated performance will be accepted in the future, in lieu of an existing claim" (*Altamuro v Capocetta*, 212 AD2d 904, 904 [1995], lv denied 85 NY2d 808 [1995]; see *Environmental Prods. & Servs. v Consolidated Rail Corp.*, 285 AD2d 700, 702 [2001]). That is, an accord and satisfaction requires a "dispute as to the amount due and knowing acceptance by the creditor of a lesser amount" *Consolidated Edison Co. of N.Y. v Jet Asphalt Corp.*, 132 AD2d 296, 303 [1987]; see *Marine Midland Bank v Scallen*, 161 AD2d 103, 105 [1990]). Inasmuch as an accord and satisfaction constitutes a contract, it must be shown that the parties set forth the essential elements thereof and had a meeting of the minds to resolve the disputed claim (see *Sorrye v Kennedy*, 267 AD2d 587, 589 [1999]; *Altamuro v Capocetta*, 212 AD2d at 905).  
Continued on page 4 ⇨

<sup>1</sup> Defendant's claims adjuster stated that Rosemann rejected the first settlement offer of \$3,964,035 and demanded \$4,150,720. Defendant agreed to pay that amount two weeks later, but Rosemann again declined to settle, citing ongoing concerns with the damage estimate. After those issues were resolved, the final settlement value was over \$4.3 million.

<sup>2</sup> Plaintiffs appealed from Supreme Court's order as well, but seek only its affirmance in their brief. Accordingly, we deem their appeal to have been abandoned (see *Matter of Northern Metro. Residential Health Care Facility, Inc. v Novello*, 24 AD3d 1069, 1071 n 1 [2005]).

## Accord & Satisfaction Cont'd

Here, the relevant facts are not in dispute. The adjuster who handled plaintiffs' claim for defendant stated in deposition testimony that the architectural and engineering fees incurred in the rebuilding of a structure are a component of replacement cost. She also acknowledged that replacement cost is reduced by depreciation to arrive at the actual cash value of a structure. Nevertheless, the adjuster omitted the architectural and engineering fees from the final settlement amount because plaintiffs decided not to rebuild the inn. Rosemann asserted that he was unaware that defendant did not intend to pay the fees. Long before accepting the settlement amount, however, Rosemann had questioned whether the fees should be included in the estimate that became the basis for the final calculation of replacement cost. Although the dispute over the fees evidently was not expressly resolved, plaintiffs nonetheless accepted the settlement. As such, there was no "mistake as to matters that were not within the contemplation of the parties" that would permit plaintiffs to avoid the creation of an accord and satisfaction (13-70 Corbin on Contracts § 70.14 [2010]). Inasmuch as plaintiffs elected to accept the settlement without asserting their current claim that they

were entitled to an additional amount representing the architectural and engineering fees, the settlement gave rise to an accord and satisfaction (see *Gimper, Inc. v Giacchetta*, 221 AD2d 682, 684 [1995]; *Hemingway v State Farm Fire & Cas. Co.*, 187 AD2d 814, 815-816 [1992]; Restatement [Second] of Contracts § 154; cf. *Sabbagh v Pantano*, 170 AD2d 411, 412 [1991]; *Ginsburg v Equitable Life Assur. Socy. of U.S.*, 254 App Div 445, 447 [1938], lv denied 279 NY 810 [1938]).

Plaintiffs' remaining claims for damages, arising from items allegedly omitted or undervalued in the final calculation of actual cash value, are similarly barred by accord and satisfaction. As with the above fees, while Rosemann stated that he did not know that sales tax was omitted from the calculation of replacement cost, the record reveals that he inquired about the inclusion of the tax prior to settling the claim. Plaintiffs further complain that the valuation of unit costs in the settlement was too low, but Rosemann had affirmatively challenged those costs prior to settling the claim. Finally, plaintiffs concede that damages for additional tear-out and removal costs are unavailable given the dismissal of the second claim. *Rose Inn of Ithaca, Inc., v Great American Insurance Co.*, 2010 NY Slip Op 05852. ♦

**In Pennsylvania**

### **CASE BRIEF: SCHOOL DISTRICT TO PAY LEGAL FEES IN SPYING CASE**

Administrators at a high school in the Lower Merion School District of Philadelphia used laptop cameras with tracking software to monitor their students while at home. Using this technology, pictures were taken of students who were accused of certain types of conduct that was considered to be improper in nature.

The administrators originally denied such software was used extensively but an investigation indicated otherwise. Federal prosecutors recently declined to pursue criminal charges, indicating evidence was not found that could prove criminal intent beyond a reasonable doubt.

Blake Robbins is a student who was disciplined for his actions at home as a result of the webcam spying. As a result, there is a class action lawsuit that has been filed in federal court against the Lower Merion School District. This case is unaffected by the decision not to file criminal charges.

A federal judge recently ordered the district to pay the family's lawyer, Mark Haltzman, \$260,000 for his work done in the civil case. *Robbins v Lower Marion School District*, No. 10-0665. ♦

## **REGULATORY UPDATE**

The New York State Insurance Department has issued a September 22, 2010 News Release regarding coastal insurance issues and two **PROPOSED** regulatory amendments that may be of interest to your company which are:

- PROPOSED SECOND AMENDMENT TO REGULATION 159 (11 NYCRR 74) - WINDSTORM AND HURRICANE DEDUCTIBLE REQUIREMENTS AND DISCLOSURE INFORMATION AND OTHER NOTICES
- PROPOSED FIRST AMENDMENT TO REGULATION NO. 154 (11 NYCRR 19) - HOMEOWNERS INSURANCE; APPLICATIONS FOR WITHDRAWAL FROM MARKETPLACE

This material may be found on the New York State Insurance Department website at [www.ins.state.ny.us](http://www.ins.state.ny.us). Please contact us if you have any questions or concerns. ♦

Editor's Note: For your information the following is the opinion of the Office of General Counsel of the New York State Insurance Department issued on September 7, 2010. \*The number is listed as 10-09-02 on the Department website list but is written in the body of the text (see below) as OGC Op. No. 10-09-01. The opinion is continued on page 6.



**STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004**

David A. Paterson  
Governor

James J. Wrynn  
Superintendent

## OGC Op. No. 10-09-01

The Office of General Counsel issued the following opinion on September 7, 2010 representing the position of the New York State Insurance Department.

### Re: Unlawful Inducements

#### Question Presented:

Under the facts presented, may ABC insurer require an insured to insure her primary home with the insurer as a condition of covering her second home?

#### Conclusion:

No. The ABC insurer's requirement that an insured insure her primary home with the insurer as a condition of covering her second home runs afoul of N.Y. Ins. Law § 2324 (McKinney 2006), because it is an inducement not specified in the policy for the primary home.

#### Facts:

The Insurance Department's Consumer Services Bureau ("CSB") received a complaint from a consumer who claims that ABC insurer denied her request for insurance coverage for her second home because her primary home was not insured through ABC insurer. CSB asked ABC insurer to explain why its policy of not writing insurance for a second home unless the prospective insured has a homeowners policy on her primary home with ABC insurer is not an unlawful inducement proscribed by Insurance Law § 2324.

ABC insurer admits that its requirement that the insured purchase a policy on her primary home before the insurer will insure the insured's second home is an inducement. But ABC insurer asserts that the inducement is specified in the policy, and thus is not unlawful. ABC insurer claims that the inducement is specified in the policy because the insurance on the primary home and the second home are inter-related through language in the policies and the declaration forms. To buttress its claim that the inducement is specified in the policy, the insurer proffers its homeowners policy form (which is the same form it uses for a primary home and a second home) and two declaration forms that the insurer issued to an insured (one for a primary home and one for a second home). ABC insurer argues that policy specifies the inducement based upon its definition of the term "insured location," which the policy defines in pertinent part, as follows:

"Insured location" means:

- a. The "residence premises";
  - b. The part of other premises, other structures and grounds used by you as a residence; and
- (1) Which is shown in the Declarations; or
  - (2) Which is acquired by you during the policy period for your use as a residence;
- c. Any premises used by you in connection with a premises described in a. or b. above; . . . .

The policy defines "residence premises," in relevant part as:

- a. The one family dwelling where you reside;
  - b. The two, three or four family dwelling where you reside in at least one of the family units;
- or
- c. That part of any other building where you reside;
- and which is shown as the "residence premises" in the Declarations . . . .

The insurer also points to references in the sample declaration forms. One declaration form, which the insurer has hand-marked as "Policy #1" and "Primary HO pol.," defines the residence premises as "64 Vichy Drive" and lists an "additional insured location (Section II only)" as "Camp 9240." The other declaration, which the insurer has hand-marked as "Policy #2" and "Second H.O. policy w/ liability from primary H.O.," identifies the residence premises as "Camp 9240" and does not specify any liability coverage for the property. Rather, the second declaration states, "This policy provides no Section II coverage - see your policy No. 55 RBB868929." But nowhere does the policy state explicitly that an insured may only purchase a homeowners insurance policy on a second residence if the insured purchases a homeowners insurance policy on her primary residence.

Continued on page 6 ⇨



# OGC Opinion No. 10-09-02 Cont'd

## Analysis:

Insurance Law § 2324(a) prohibits the offering of inducements in connection with the purchase of most types of property/casualty insurance, including homeowners insurance. The express language of Insurance Law § 2324 precludes insurers, brokers, agents and their employees and representatives from directly or indirectly offering inducements or valuable consideration (other than an article of merchandise, or "keepsake", not exceeding \$15 in value), in connection with the offer of insurance, unless the inducement or valuable consideration is specified in the insurance policy. See Opinion<sup>1</sup>) No. 07-07-10 (July 18, 2007). That statute reads in pertinent part as follows:

(a) No authorized insurer, no licensed insurance agent, no licensed insurance broker, and no employee or other representative of any such insurer, agent or broker shall make, procure or negotiate any contract of insurance other than as plainly expressed in the policy or other written contract issued or to be issued as evidence thereof, or shall directly or indirectly, by giving or sharing a commission or in any manner whatsoever, pay or allow or offer to pay or allow to the insured or any employee of the insured, either as an inducement to the making of insurance or after insurance has been effected, any rebate from the premium which is specified in the policy, or any special favor or advantage in the dividends or other benefit to accrue thereon, or shall give or offer to give any valuable consideration of inducement of any kind directly or indirectly, which is not specified in such policy or contract, other than any article or merchandise not exceeding fifteen dollars in value which shall have conspicuously stamped or printed thereon, the advertisement of the insurer, agent or broker. (Emphasis added.)

Insurance Law § 2324's proscription against unspecified inducements includes situations where the purchases of two insurance policies are tied together, such that the purchase of one policy is contingent on the purchase of another. See, e.g., OGC Opinion No. 05-09-19 (September 21, 2005); OGC Opinion No. 87-56 (NILS INsource ("NILS") September 25, 1987). Such "tie-in" sales are permitted only where the valuable inducement is specified in the underlying policy, and the insurer furnishes the policies in a manner consistent with the insurer's filing and underwriting guidelines.<sup>1</sup> OGC Opinion No. 87-2 (NILS February 1, 1987). The underlying policy is the policy that the insured must purchase in order to obtain the other policy, which in this case is the policy on the insured's primary residence. See OGC Opinion No. 87-56 (NILS September 25, 1987).

The common meaning of the word "specify" is "to identify clearly and definitely." See New Oxford American Dictionary: Second Edition (2005) at 1629. Thus, it is not sufficient that the policies are "inter-related," as ABC insurer asserts. The inducement must be specifically stated in the terms of the policy itself.

ABC insurer's homeowners policy on a primary home, together with the declaration pages of the insurance policy for a primary home and a second home, does not specify the inducement because the policy does not identify it clearly and definitely. Indeed, there is nothing in the policy form or declarations that clearly and definitely states that the insurer will insure a second home only if the insured purchases a policy on her primary residence from ABC insurer. In fact, without explanation from ABC insurer, it is impossible to discern the insurer's stance on insuring second homes.

In addition, the definitions of "insured location" and "residence premises" do not specify the inducement. To the contrary, by their plain terms, these definitions demonstrate that ABC insurer conceivably could use the policy form to insure a second residence without insuring the primary residence simply by designating the property as either an insured location or the residence premises in the declarations. In fact, ABC insurer's second sample declaration form does just that: it identifies a second home as the policy's "Residence Premises."

The sample declarations provided by ABC insurer also do nothing to specify clearly and definitely that the insurer will only issue a policy on a second home if the insured purchases a policy on her primary home from ABC insurer. The sample declarations merely show that ABC insurer provides coverage for a second home by providing part of the coverage through the policy of a primary residence, and part through a separate policy for the second home.

In sum, ABC insurer's requirement that an insured insure her primary home with the insurer as a condition of covering her second home runs afoul of Insurance Law § 2324 because it is an inducement that is not specified in the policy for the primary home.

For further information you may contact Senior Attorney Brenda M. Gibbs at the Albany Office.

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<sup>1</sup> In the alternative, rather than issue two policies, the insurer may offer the coverage for the second home as an endorsement to the policy on the primary home, provided the coverage on the second home is available only through the endorsement. See OGC Opinion No. 87-2 (NILS February 1, 1987). ♦



# Circular Letter No. 9 (2010)

Editor's Note: For your information the following is Circular Letter No. 9 (without the signature information) issued by the New York State Insurance Department.



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

David A. Paterson  
Governor

James J. Wrynn  
Superintendent

Circular Letter No. 9 (2010)  
August 9, 2010

**TO: All Insurers Writing Property/Casualty Policies in New York**

**RE: Incorrect Amounts Listed on Cancellation Notices for Non-Payment of Premium**

**STATUTORY REFERENCES: Insurance Law §§ 3425 and 3426**

The purpose of this Circular Letter is to clarify for property/casualty insurers that are subject to Insurance Law §§ 3425 and 3426 that a notice of cancellation for non-payment of premium must clearly inform the policyholder of the overdue amount.

It has come to the Department's attention that some insurers are sending to policyholders notices of cancellation for non-payment of premium that include installment payments that are not yet in arrears. Therefore, many insureds believe that they must pay premiums not yet overdue in order to avoid a cancellation for non-payment of premium.

New York Insurance Law § 3425(c) (McKinney Supp. 2009) states in relevant part as follows:

After a covered policy has been in effect for sixty days, or upon the effective date if the policy is a renewal, no notice of cancellation shall be issued to become effective...unless it is based on one or more of the following:

(1) With respect to automobile insurance policies:

(A) nonpayment of premium, provided, however, that a notice of cancellation on this ground shall inform the insured of the amount due; \* \* \* \*

(2) With respect to personal lines insurance policies:

(A) nonpayment of premium, provided, however, that a notice of cancellation on this ground shall inform the insured of the amount due;

Regarding commercial lines insurance, Insurance Law § 3426(c) states that:

After a covered policy has been in effect for sixty days unless cancelled pursuant to subsection (b) of this section, or on or after the effective date if such policy is a renewal, no notice of cancellation shall become effective until fifteen days after written notice is mailed or delivered to the first-named insured and to such insured's authorized agent or broker, and such cancellation is based on one or more of the following:

(1) With respect to covered policies:

(A) nonpayment of premium provided, however, that a notice of cancellation on this ground shall inform the insured of the amount due.

In turn, Insurance Law § 3425(a)(10) and Insurance Law § 3426(a)(3) define "nonpayment of premium" as:

the failure of the named insured to discharge any obligation in connection with the payment of premiums on a policy of insurance or any installment of such premium, whether the premium is payable directly to the insurer or its agent, or indirectly under any premium finance plan or extension of credit. Payment to the insurer, or to an agent or broker authorized to receive such payment, shall be timely, if made within fifteen days after the mailing to the insured of a notice of cancellation for nonpayment of premium.

Because the language of Insurance Law §§ 3425(c)(1)(A), 3425(c)(2)(A) and 3426(c)(1)(A) is identical, the Department construes these provisions in the same manner. Thus, an insured may receive a non-payment of premium notice only if the insured has failed to discharge an obligation in connection with the payment of premiums on a policy of insurance.<sup>[1]</sup>

In addition, in an Office of General Counsel (OGC) Opinion 06-12-08 (December 14, 2006), the Department's OGC found that a notice of cancellation that failed to correctly inform the insured of the amount that was past due constituted a violation of Insurance Law § 3425(c)(1)(A) because any amount not yet due does not provide legal grounds to cancel for nonpayment of premium.

Accordingly, a notice of cancellation for non-payment of premium must inform the policyholder of the overdue amount and that the policyholder must pay that amount in order to avoid a cancellation.

While an insurer may notify an insured of an installment payment at the same time that the insurer sends a notice of cancellation, the insurer must make clear that those installment payments are not necessary in order to avoid a cancellation.

Questions regarding this Circular Letter should be addressed to Lisa Bugaj, Examiner, New York State Insurance Department, One Commerce Plaza, Albany, New York 12257, 518-473-8162, [lbugaj@ins.state.ny.us](mailto:lbugaj@ins.state.ny.us).

[1] An obligation in connection with the payment of premiums on a policy of insurance may include, in some instances, an installment fee,



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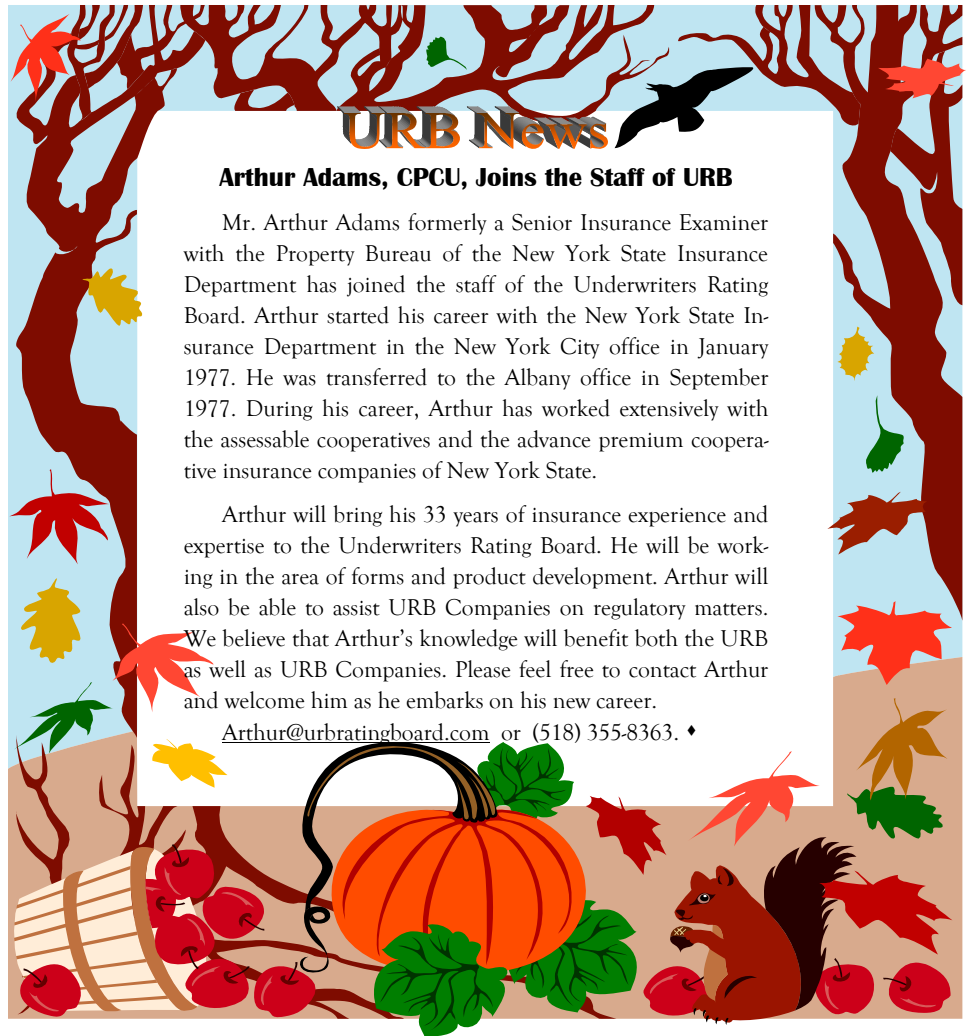
[Jean@urbratingboard.com](mailto:Jean@urbratingboard.com)

[Mary@urbratingboard.com](mailto:Mary@urbratingboard.com)

[Tim@urbratingboard.com](mailto:Tim@urbratingboard.com)

[Kim@urbratingboard.com](mailto:Kim@urbratingboard.com)

[Arthur@urbratingboard.com](mailto:Arthur@urbratingboard.com)



## URB News

### Arthur Adams, CPCU, Joins the Staff of URB

Mr. Arthur Adams formerly a Senior Insurance Examiner with the Property Bureau of the New York State Insurance Department has joined the staff of the Underwriters Rating Board. Arthur started his career with the New York State Insurance Department in the New York City office in January 1977. He was transferred to the Albany office in September 1977. During his career, Arthur has worked extensively with the assessable cooperatives and the advance premium cooperative insurance companies of New York State.

Arthur will bring his 33 years of insurance experience and expertise to the Underwriters Rating Board. He will be working in the area of forms and product development. Arthur will also be able to assist URB Companies on regulatory matters. We believe that Arthur's knowledge will benefit both the URB as well as URB Companies. Please feel free to contact Arthur and welcome him as he embarks on his new career.

[Arthur@urbratingboard.com](mailto:Arthur@urbratingboard.com) or (518) 355-8363. ♦

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