

The URB Insider

A Quarterly Publication of Underwriters Rating Board



URB Forms Meeting Held May 5

On Tuesday, May 5, URB held a Forms Meeting at our office in Schenectady for all URB subscribers. URB had a great turnout with almost 75 people in attendance.

In preparation for the meeting, URB recently sent out a questionnaire and “DRAFT” base forms for review by subscribers. The meeting was educational in nature to introduce the concepts in the proposed SF policy forms.

As previously announced, URB has been working on an updated SF Forms

series. Before continuing with the update and filing of the forms, one major focus of the meeting was to provide information to subscribers on the forms series and to get feedback.

URB detailed why this policy series is being updated and explained what changes have been made to the policy forms, and the rationale for the changes.

URB also went over the questionnaire responses received from subscribers and discussed how forms projects will be developed going forward.

In addition, URB heard some great input from subscribers of what forms series subscribers would like to see updated next and heard ideas and input on future forms projects.

URB also detailed other forms related topics and other current forms projects in the works.

We are grateful to all URB subscribers who attended the Forms Meeting on May 5. URB will keep our subscribers updated on the status of the SF Form Series and other projects as they progress. ♦

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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 the material contained in the publication.

Court Of Appeals Examines Water Damage Exclusion And Ensuing Loss

In the case of *Platek v. Town of Hamburg*, 2015 NY Slip Op 01483 [24 NY3d 688], the New York Court of Appeals reversed the decision of the Supreme Court, Appellate Division, Fourth Department to rule that a water damage exclusion precluded coverage for damage to the insured's basement caused by flooding from a water main that ruptured. In addition, the Court held that an ensuing loss provision did not serve to provide coverage.

In 2010, a water main abutting the property of the Plateks ruptured causing water to flood into and severely damage their home's finished basement. The Plateks made a claim under the Allstate Homeowners Policy. The policy excludes the following:

"[Allstate does] not cover loss to the property . . . consisting of or caused by:

"1. Flood . . .

"2. Water . . . that backs up through sewers or drains.

"3. Water . . . that overflows from a sump pump, sump pump well or other system designed for the removal of subsurface

water . . .

"4. Water . . . on or below the surface of the ground, regardless of its source[,] [including] water . . . which exerts pressure on, or flows, seeps or leaks through any part of the residence premises.

"We do cover sudden and accidental direct physical loss caused by fire, explosion or theft resulting from items 1 through 4 listed above" (emphases added).

(See *Platek v. Town of Hamburg*, 2015 NY Slip Op 01483 [24 NY3d 688]).

Allstate disclaimed coverage, based on item 4. of the policy's water loss exclusion. The Plateks then sued Allstate and moved for summary judgment. Plaintiffs asserted that because they had sustained a "water intrusion loss" caused by explosion of the ...water main," their claim fell within the exception to the water loss exclusion. Allstate cross-moved for summary judgment. Supreme Court granted plaintiffs' motion and denied Allstate's cross motion, and declared plaintiffs' loss was covered and Allstate was required to pay the claim. Allstate appealed.

The Appellate Division, with two Justices dissenting, in part, modified Supreme Court's order by vacating the declaration and otherwise affirmed. All the Justices agreed that because plaintiffs asserted a cause of action for breach of contract, Supreme Court erred by declaring the loss was covered and directing payment. The court split on the issue of the applicability of the policy's sudden and accidental exception to the water exclusion. After a stipulation on damages, Allstate appealed.

In arriving at its decision, the Court of Appeals indicated interpreting the insurance policy as plaintiffs proposed would contravene the water loss exclusion's purpose. Accordingly, the Court of Appeals concluded that the policy's unambiguous language excludes the water damage to plaintiffs' home from coverage, and the exception does not nullify the water loss exclusion or render it ambiguous.

To read the *Platek* case in its entirety, click on the link below. ♦

Court Of Appeals Rules In Two Cases That Interpret Scope Of Labor Law §240

Recently, the New York Court of Appeals decided two cases in which they interpreted whether the injuries sustained fell under New York's Labor Law §240, commonly referred to as the Scaffold Law.

In the first case of *Nicometi v. Vineyards of Fredonia, LLC*, 2015 NY Slip Op 02801, the Court of Appeals was called upon to determine whether Labor Law §240(1) applied where plaintiff, Marc Nicometi, sustained injuries after he slipped on ice and fell to the floor while using stilts to install insulation in a ceiling in January, 2006.

According to plaintiff, the accident occurred when he stepped forward with one foot, while swinging a hammer tacker above his head to affix insulation between the ceiling rafters, and he slipped on a thin patch of ice. He testified at his deposition that prior to falling, he was aware that ice and water had accumulated on parts of the floor, and he claimed to have so informed his supervisor. Nicometi claimed his supervisor instructed him to com-


plete the installation despite this fact. The supervisor alternatively testified that it was him, not plaintiff, who first noticed the ice and that he directed plaintiff not to insulate the ceiling above the icy area. The testimony in the record varies as to how high off the ground Nicometi was elevated with plaintiff claiming he was elevated three to five feet off the ground, his supervisor claiming the stilts elevated him about 18 inches, and a co-worker testifying the stilts were set at the lowest setting which was about three feet. Plaintiff subsequently commenced this action asserting common law negligence and claims under Labor Law §§200, 240(1) and 241(6) against the various defendants who are the owners of the site and the hired contractors, including the general contractor. One of the parties commenced a third-party action seeking contribution or indemnification from a plumbing subcontractor.

Supreme Court granted plaintiff summary judgment against some of the defendants on the

Labor Law §240(1) claim. The Appellate Division, with two Justices dissenting, modified Supreme Court's order by denying plaintiff's motion for partial summary judgment and, as so modified, affirmed. The Appellate Division granted defendants and plaintiff leave to appeal and cross appeal, certifying the question whether its order was properly made.

The Court of Appeals determined that here, plaintiff's accident was clearly caused by a separate hazard—ice—unrelated to any elevation risk. However, there was a dissent by Judge Lippman that would have had Labor Law §240(1) apply. Because of the majority holding, plaintiff was not able to recover under §240(1) of the Labor Law.

To read the *Nicometi* case in its entirety, click on the link below.

There was a different outcome in the case of *Saint v. Syracuse Supply Company*, 2015 NY Slip Op 02802. Information about the case and the holding follow on the next page. 

Court Of Appeals Rules In Two Cases That Interpret Scope Of Labor Law §240 Cont'd

In this second case, plaintiffs, Joseph Saint and his wife Sheila, challenged the dismissal of their claims arising from work-related injuries sustained by Joseph. The injuries were sustained when Joseph was engaged in the installation and removal of a billboard advertisement. The Court of Appeals concluded that because plaintiff's work required the attachment, at an elevated height, of custom-made wooden extensions that changed the dimensions of the billboard frame, that plaintiff was engaged in alteration of a structure within the meaning of Labor Law §240(1). The Court further held that he properly asserted claims for unprotected construction work under Labor Law §240(2) and §241(6) based on the lack of a guardrail on the billboard platform. As such, the Court of Appeals reversed the dismissal of plaintiff's complaint.

Plaintiff was part of a three-person crew working to replace an advertisement on a billboard located in Erie County. Plaintiff and the other members of the

construction crew were working on the installation of a new advertisement that necessitated the attachment of additions, called extensions, to the existing frame. The job required that the crew move the old advertisement from one side of the frame to the other. The crew members were at different locations on the upper and lower catwalks.

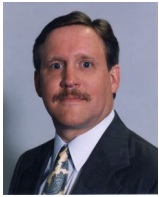
Plaintiff was on the lower rear catwalk when he heard the other crew members call for assistance. Plaintiff went up to the upper catwalk to assist them, and in order to get around one of the crew members, plaintiff detached his lanyard from the catwalk's safety cable. Before he was able to reattach the lanyard, a strong wind gust caused the vinyl to strike plaintiff in the chest, knocking him ten feet below onto the lower catwalk. As a result plaintiff suffered a dislocated right shoulder and several herniated disks in his back precluding him from engaging in work on billboards. Plaintiff was subsequently terminated from his employment.

Plaintiff sued defendant Syracuse Supply Company, LLC, owner of the property where the billboard is located and alleged violations of Labor Law §§240(1), 240(2) and 241(6), and derivative claims for plaintiff Sheila Saint's loss of support, consortium and expenses related to medical bills. Defendant moved for summary judgment to dismiss plaintiff's amended complaint and plaintiff cross-moved for partial summary judgment. Supreme Court denied both motions. The Appellate Division reversed and granted summary judgment for defendant.

The Court of Appeals held that given the nature of plaintiff's work on the day of his injury and that the attachment of extensions to the billboard affects a significant change to the structure, plaintiff was engaged in work that altered the structure under Labor Law §240(1), and it was an error to dismiss his claim. They also held it was error to dismiss plaintiff's other claims.

To read the *Saint* case in its entirety, click on the link below. ♦

Leadership Changes Takes Place At Madison Mutual Insurance Company



Timothy Burback

After 36 years of service to the Company and 42 years in the insurance industry, Timothy D. Burback, CPCU, FMDC has stepped down from his role as President and CEO of Madison Mutual Insurance Company, an assessment cooperative fire insurance company located in Chittenango, New York that has been serving upstate New York since 1893.

Burback is a 1968 graduate of the Manlius School, Manlius, NY and in 1972 received a B.A. in Social Studies from Utica College, Utica, NY. In 1987 he earned the Chartered Property Casualty Underwriter (CPCU) designation from The Institutes, Malvern, PA. During his tenure, two mergers were effectuated, the first in 1983 with Herkimer Cooperative Insurance Association and the second in 1986 with Patrons Fire Relief Association of Madison County.

He started working for Madison Mutual in March 1978 as a claims, marketing and loss control representative. He became the managing officer of the Company in September 1982. Burback began his career in May 1972 working for Crawford & Company, Portland, ME as a casualty adjuster. For five years, he was a property adjuster

for Underwriters Adjusting Company, Syracuse, NY handling large fire losses in a 15 county area of central New York. He has served as chair and director of Guilderland Reinsurance Company and mayor and trustee of the Village of Waterville. He will remain on the Company's Board of Directors and for the next two years will serve as Chief Investment Officer (CIO) with responsibility for investments and reinsurance.

He also plans to take some short trips, winter for one or two months in a warmer climate, spend time with his grandchildren, help his children with home improvement projects, read history books and sort through 40+ years of memories collecting in his cellar, attic and garage. Last but not least, he would like to do thoughtful things for others, help them, visit the sick, and enjoy events with friends. In looking back at his career, Burback mentions his appreciation of the value of the Finger Lakes Insurance Council. He says it has always been his most favorite insurance industry organization and the camaraderie between the company managers will be one of his best memories.

John C. Owens, Jr., CPCU, CIC, ARe formerly Senior Vice President of Madison Mutual has assumed the position of President and CEO.



John Owens

Owens, who grew up in the Capital District, has 27 years of insurance industry experience.

A 1987 graduate of Hudson Valley Community College with an AAIS in Banking, Insurance and Real Estate, Owens began his insurance career at Capital Mutual Insurance Company in West Sand Lake, NY where he developed his love of the insurance business. He also worked for the Electric Insurance Company when it was in Schenectady NY and Guilderland Reinsurance Company/GRC Brokerage, Guilderland NY, under the tutelage of Henry L. Pellerin and Frank Becker.

Owens joined Madison Mutual Insurance Company in 1994 as Marketing Manager and has spent many years learning from the knowledge and experience of Tim Burback. He has acquired his NYS Brokers License, Certificate in General Insurance, Associate in Reinsurance, CPCU designation and CIC designation.

According to Owens, thanks to the steady hand of Burback, the Company is in rock solid financial condition with capacity to increase its written premium. As such, and now that the recent software conversion is complete, the Company will focus on premium growth. ♦

CONGRATULATIONS!

Leadership Changes Announced At Associated Mutual Insurance Cooperative

Associated Mutual Insurance Cooperative, a multi-line regional property and casualty insurer, recently announced the appointments of Robert Wong as President and Claudia Dietz as Vice President Finance and Vice President Human Resources. Mr. Wong and Ms. Dietz succeed Zane Morganstein and Gary Bowers, both of whom recently retired after long, successful careers with the Company.

Working with Associated Mutual's Board of Directors, Mr. Wong and Ms. Dietz will be responsible for managing the day-to-day operations of the Company, pursuing continued growth and premium diversification, and maintaining the Company's commitment to its policyholders and agents. Mr. Morganstein retired as President after an unprecedented 42-year tenure and will remain on the Company's Board. Mr. Bowers retired after serving 23 years as the Company's Vice President Finance and Vice

President Human Resources.

"We are grateful for Zane and Gary's years of stewardship and service to Associated Mutual, the success of which can be directly attributed to their hard work and dedication," said Irwin Gitlin, Chairman of the Board. "We congratulate both of them on their respective milestones."

Mr. Morganstein added, "the Board put in motion a comprehensive succession plan two years ago, and we are excited to have brought Robert and Claudia into the Associated Mutual family. We are confident they will excel at extending Associated Mutual's legacy as a disciplined insurance carrier that provides unsurpassed service to its agents and policyholders. They bring tremendous experience as well as a fresh perspective to our business and organization."

Mr. Wong joined Associated Mutual in January of 2014 as Chief Operating Officer. He has prior

experience in real estate, hospitality and finance and was most recently Chairman of the Board and President of Upper Hudson National Insurance Company, a position he held between 2010 and 2013. He previously served as Corporate Secretary and Director of Upper Hudson National from 2007 to 2009. Mr. Wong also served as Chief Operating Officer of Cinium Financial Services Corp., the parent company of Upper Hudson National.

Ms. Dietz joined Associated Mutual in January of 2015 and holds over 20 years of accounting, actuarial and analytical project experience. From 2010 to 2014, she served as a school district accountant for the Sullivan County Board of Cooperative Educational Services. Prior to that, she worked for over 15 years at Frontier Insurance Company in the areas of accounting, actuarial and management reporting, and reinsurance. ♦



URB Companies Combined 2009-2013 Five Year Total Landlords Program

Zone	Earned Premium (\$)	Actual Losses as of 03/2014 (\$)	Ratio (%)	Number of Structures
Zone 1.1	15,274,872	6,144,133	40.22	23,193
Zone 1.2	12,223,639	2,934,059	24.00	19,244
Zone 1.3	23,122,820	5,228,054	22.61	33,424
Zone 1.4	13,488,002	4,373,520	32.43	19,649
Zone 1.5	25,658,131	9,658,731	37.64	25,798
Zone 1.6	9,568,147	3,260,015	34.07	10,079
Zone 1.7	12,215,927	4,549,915	37.25	14,931
Zone 1.8	14,593,563	3,970,429	27.21	22,613
Zone 1.9	3,241,211	947,006	29.22	3,003
Zone 2	14,044,139	4,105,912	29.24	16,070
Zone 3	1,916,318	512,467	26.74	1,400
	145,346,769	45,684,241	31.43	189,404

Drone Plan Proposed

In February, the Federal Aviation Administration released a proposal for how small, commercial drones will be governed. As a result, a plan is in place for remote-controlled aircraft to share airspace with planes.

The proposal allows any drone that weighs less than 55 pounds to fly up to 500 feet in the air and less than 100 mph, so long as it is flown within sight of a remote pilot during daytime hours.

The pilot of the drone must be at least 17 years old and have passed a test. However, their certificate will not require the flight

hours or medical rating of a typical pilot's license.

A public comment period will follow on the proposal for the use of commercial drones.

The FAA has been granting waivers since September, 2014 for use of drones in commercial applications.

On a related issue, President Obama also signed a memorandum that will govern how federal agencies can use drones of any size.

Equivalent in affect to an Executive Order, the memorandum requires agencies to publish with-

in one year how to access their policies about drones. The Commerce Department's National Telecommunications and Information Administration will also develop a framework for privacy and transparency in commercial drone use.

It has been well publicized that one of the most prevalent uses of drones by the federal government has been surveillance of the southern border of the country; but it is expected they will be used for other purposes in the future.♦

News From Pennsylvania

Recently, the Pennsylvania Insurance Department sent a notice to insurance companies to inform them that earthquake endorsements to homeowners insurance policies cannot exclude coverage for earthquakes that may be caused by human activity such as fracking. As such, insurers and rate service organizations have been instructed that earthquake endorsements that attach to homeowners policies should cover all earthquakes. Companies that have any endorsements already in the marketplace which contain such an exclusion should not enforce them. New endorsements without such exclusionary language should be filed with the Pennsylvania Insurance Department no later than July 1, 2015. ♦

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Insider will be a look at
Solar Panels and related
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