The URB Insider

A Quarterly Publication of Underwriters Rating Board

Volume 14, Issue 2
Summer, 2016

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Congratulations Jaime Bashaw!

URB would like to extend a big congratulations to their own Jaime Bashaw on successfully completing her CPCU designation! Jaime started her career at URB in November 2013 beginning with office administrator duties before taking on some of the work with rate filings and assisting URB member companies with various projects.

In addition to her latest accomplishment, Jaime is a graduate of SUNY Oswego. Now that her designation is complete, Jaime can devote more time to her other interests this summer like camping in the Adirondacks, spending time with friends and family, and working on her new house. ◆

Court Of Appeals Imposes Duty To Warn In Asbestos Case

On June 28, the Court of Appeals decided the case of *Matter of New York City Asbestos Litig*., 2016 NY Slip Op 05063. The Court was called upon to decide when, if ever, a manufacturer must warn against the danger inherent in using the manufacturer's product together with a product designed and used by another company. The Court's decision was consistent with *Rastelli v. Goodyear Tire & Rubber Co*., (79 NY2d 289 [1992]). The Court held that the manufacturer of a product has a duty to warn of the danger arising from the known and reasonably foreseeable use of its product in combination with a third-party product, which as a matter of design, mechanics, or economic necessity, is necessary to enable the manufacturer's product to function as intended.

This decision resulted from the appeals of two verdicts against Crane Co., (Crane) a manufacturer of valves in cases where the valves were sold either to the U.S. Navy (Navy) or to General Motors (GM). These cases involved using the valves along with gaskets and packing on steam pipe systems for use on Navy ships or in an automotive manufacturing plant. Although there is no evidence that the Crane product contained asbestos, there is evidence that Crane's valves could not practically function in a high-pressure, high-temperature steam pipe system without gaskets, insulation and packing for the valve stems. Crane's technical drawings for the Navy application specified the use of asbestos-based sealing components. The valves were packaged by Crane with bonnet gaskets that contained an asbestos disk sealed by a layer of rubber. Crane also packaged the valves with braided asbestos-based packing. Crane's provision of asbestos-based components comported with Navy specifications, which called for gaskets, valves and insulation that contained asbestos. Crane also sold its valves to GM for use in the high-pressure, high-temperature steam pipe systems in GM's factories. By Crane's own admission, it may have supplied GM with valves accompanied by asbestos-based gaskets and packing. In fact, Crane's schematics for the valves specified the use of asbestos-based packing and gaskets.

From 1960 to 1977, plaintiff Doris K. Dummitt's husband, decedent Ronald Dummitt, was a Navy boiler technician who worked on Crane's valves, on which were installed asbestos-based gaskets, packing and insulation that were designed and manufactured by other companies. In April 2010, Dummitt was diagnosed with pleural mesothelioma which he contracted from exposure to asbestos dust. From 1960 to 1979, plaintiff Joann Suttner's husband, decedent Gerald Suttner (Suttner), worked as a pipe fitter at GM's Tonawanda Engine Plant, which had a steam pipe system featuring Crane valves with third-party gaskets and packing materials. Specifically, the gaskets, packing and surrounding insulation were not manufactured or designed by Crane, and they all contained asbestos. In September 2010, Suttner was diagnosed with pleural mesothelioma which he contracted from exposure to asbestos dust.

Significantly, the Court made a detailed examination of its landmark decision in *Rastelli v. Goodyear Tire & Rubber Co*., to arrive at the outcome here. This is because Crane relied primarily upon *Rastelli* to assert that it had no duty to warn the end users of its valves that they could be exposed to carcinogenic asbestos dust released by the installation and replacement of third-party asbestos-based gaskets, packing and insulation on Crane's valves. Crane contended it had no control over the production of the other companies' asbestos-bearing products and it did not place those products in the stream of commerce. In response, plaintiffs in these cases contended that Crane's strong interest in its customers' use of third-party asbsestos-based products and its valves' close connection to those other products bound Crane to warn of the dangers of using its valves and those other products together. After conducting a highly factual analysis, the Court concluded that *Rastelli* and the other precedents, as well as sound public policy, supported the recognition of a duty to warn under these circumstances.

Click here to read this case in its entirety. ◆

NY CASE

Driver Can Anticipate Other Drivers Will Obey Traffic Laws

In the case of *Penda v. Duvall*, 2016 NY Slip Op 05467, plaintiff commenced this action seeking damages for injuries he sustained as a passenger in a motor vehicle accident. Defendant Michael F. Bartowski moved for summary judgment dismissing the complaint against him, contending that the negligence of defendant Lekeisha N. Denman-Duvall was the sole proximate cause of the accident. Bartowski appealed from an order denying that motion, and the Appellate Division, Fourth Department reversed the decision of Supreme Court.

The decision is based on the concept that a driver who has the right-of-way is entitled to anticipate that other drivers will obey the traffic laws requiring them to yield to the driver with the right-of-way. Although the driver with the right-of-way has a duty to use reasonable care to avoid a collision, a driver with the right-of-way who has only seconds to react to a vehicle that has failed to yield is not comparatively negligent for failing to avoid the collision.

The court concluded Bartkowski demonstrated his entitlement to judgment as a matter of law by demonstrating that at the time of impact he was lawfully proceeding in the center lane of travel when Denman-Duvall lost control of her vehicle after striking a large puddle of water and within seconds her vehicle entered Bartkowski's lane from the left and collided with his vehicle.

Contrary to Supreme Court's determination, the appellate court concluded that plaintiff's submissions in opposition failed to raise a triable issue of fact.

Click here to read this case in its entirety. ◆

NY CASE

Separate Dwelling Units on Homeowners Application

In the Appellate Division, First Department case of *Almonte v. CastlePoint Ins. Co.*, 2016 NY Slip Op 05225 [140 AD3d 658] it was decided the motion court properly granted summary judgment to CastlePoint, based on its determination that the premises contained a basement apartment rendering it a "three-family" dwelling, as opposed to the "two-family" designation that was listed on the insurance application. Based on prior precedent, the question of number of families on an insurance application means the number of separate dwelling units in the building.

CastlePoint also demonstrated through the insured's admission in a statement to CastlePoint's investigator, and the investigator's inspection of the premises that the home was a three-family dwelling, rather than a two-family dwelling and was thus not covered by the policy.

Click here to read this case in its entirety. ◆

Court Examines School Duty To Supervise Students

This Appellate Division, Third Department case of *Elbadwi v. Saugerties Cent. Sch. Dist*., 2016 NY Slip Op 05421 is a cross appeal from the Supreme Court, which partially denied defendant's motion for summary judgment dismissing the complaint.

Plaintiff was a 10-year-old student attending Cahill Elementary School in Ulster County. On the morning of December 13, 2012, plaintiff's class gathered in the school's cafeteria for recess before lunch. According to defendant's lunch monitor, plaintiff and her classmates were expressly instructed to remain on the blacktop area adjacent to the school's playground and not to venture onto the playground itself, as the rubberized surface of the playground was icy and the equipment was covered with snow. Less than one minute after plaintiff exited the school for the scheduled outdoor recess, in an effort to avoid a collision with a fellow classmate, she jumped onto a double slide located on the playground, slipped, fell and fractured her upper left arm.

Plaintiff commenced this negligence action against defendant. Plaintiff alleged that defendant was negligent in supervising its students and, further, in failing to maintain its property in a reasonably safe condition. Defendant moved for summary judgment dismissing the complaint. Supreme Court granted defendant's motion as to the negligent supervision claim, but denied the motion as to the premises liability claim — finding a question of fact as to whether defendant had maintained the playground in a reasonably safe condition.

According to the appellate court, Supreme Court properly granted defendant's motion for summary judgment dismissing the negligent supervision claim. The court quoted precedent in discussing that schools are under a duty to supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision. They indicated the case law makes clear, however, that schools are not insurers of their students' safety. Where, as here, the accident occurs in so short a span of time that even the most intense supervision could not have prevented it, lack of supervision is not the proximate cause of the injury and summary judgment in favor of defendant is warranted.

The court reached a similar conclusion with regard to plaintiff's premises liability claim. To prevail on its motion for summary judgment, defendant was required to establish as a matter of law that it maintained the playground in a reasonably safe condition and that it neither created the allegedly dangerous condition nor had actual or constructive notice of it. The court determined the defendant's proof was sufficient and that plaintiff did not tender sufficient admissible proof to raise a question of fact. Given those circumstances, the appellate court determined plaintiff's premises liability claim could not stand, and the Supreme Court should have granted defendant's motion for summary judgment dismissing the complaint in its entirety.

Click here to read this case in its entirety. ◆

FAA Drone Regulations

On June 21, 2016, Part 107 of the Federal Aviation Regulations were issued for rules regarding non-hobbyist small unmanned aircraft (UAS), and will take effect late August 2016. In other words, we finally have the long awaited regulation for commercial drones. Many of the finalized requirements have not changed much from the proposals and rumors that have been swirling since we last reported on the issue.

As expected, the Federal Aviation Administration (FAA) rules cover everything from size, speed, location and who can operate a drone. Some of the requirements are highlighted as follows:

- Operators must possess a remote pilot airman certificate with a small UAS rating or be directly supervised by someone who has this certificate. Requirements for the certificate are you must be at least 16 years old and either:
    - Pass a test at an FAA-approved testing center; or
    - Take a UAS training course provided by the FAA if they already have a Part 61 pilot certificate and a recently completed flight review.
- Within 10 days report any incidents involving serious injury, loss of consciousness, or property damage (other than to the UAS) exceeding $500.
- Drones must be registered prior to use.
- The FAA is not requiring any specific criteria for pre-flight check. Operators are responsible for their own airworthiness inspections.
- Drones must weigh under 55 pounds including secured cargo loads. External load size is not specified beyond total drone weight, but it must not affect any flight characteristics. In addition, property can be transported for compensation within state boundaries.
- Approved operating hours are 30 minutes prior to sunrise to 30 minutes past sunset.
- Drones can have a maximum altitude of 400 feet above ground, or higher if within 400 feet of a structure. Drone speed limited to 100mph (87 knots).
- The FAA will offer a waiver of most restrictions given the UAS operator can prove safe operation. A copy of the waiver was not available at time of print.
- During certification, education will include privacy guidelines. Privacy guidelines will also be part of the FAA's B4UFly mobile app.
- The FAA also noted Part 107 will not apply to model aircraft. Model aircraft will continue to fall under the requirements of Section 336 of Public Law 112-95.

Further reading:

- Part 107 in its entirety
- FAA's Voluntary Best Practices for UAS Privacy, Transparency, and Accountability ◆

Pokémon Go And The Implications Of Augmented Reality

Earlier this summer Nintendo released Pokémon Go here in the United States, and it is taking the country by storm. For anybody who doesn't know, this is a downloadable app for your smartphone that provides an augmented reality experience. According to the Oxford Dictionary, an augmented reality experience is "a technology that superimposes a computer-generated image on a user's view of the real world, thus providing a composite view." That means the computer-generated Pokémon are seen on the live camera on the smartphone of the person playing the game. The person playing the game will visit real life locations to locate and then catch the computer figure.

As a practical matter, many people are now traveling all over aiming their smartphones to catch these creatures at cemeteries, parks, beaches, landmarks and other places. Does this phenomenon create insurance issues from legal liability? Of course, players assume the responsibility to play safely under the terms of service and Nintendo disclaims all liability for accidents that result. These could include property damage, bodily injury or even death. Every time the app is opened, the game maker warns the game player to be aware of their surroundings. Players also are required to agree not to enter private property without permission.

What if while doing this activity a game player travels onto private property or breaks a law? Does that become a trespass offense for which the game player is responsible? Can a game player make a nuisance of him or herself while engaging in this activity? Moreover, who is responsible when the game player comes onto a landowner's property to capture a Pokémon and sustains an injury to themselves or causes an injury to a third person? Who is responsible when the game player drifts out into traffic and either injures themselves or another person as a result?

These are new and emerging issues that the world is certain to see more of if more games featuring augmented reality gain popularity. With time and injuries sustained, insurance and the case law will also evolve as more becomes known. It remains to be seen how long this game will be so popular, but it is likely that the insurance and case law implications resulting from this phenomenon will be in the fabric of our lives for a long time to come. ◆

URB Homeowners Losses By Cause Of Loss Accident Years 2010-2014

Homeowner Cause Of Loss	Code	Amount $	Ratio
Aircraft	1	13,547	0.00%
Breakage	2	13,562	0.00%
Collision	3	8,755	0.00%
Credit Card	4	1,500	0.00%
Earthquake & Landslide	5	132,349	0.04%
Explosion	6	222,095	0.07%
Fire	7	113,819,764	36.96%
Flood & Sewer Backup	8	2,986,951	0.97%
Freezing	9	14,174,001	4.60%
Glass Breakage	10	127,187	0.04%
Hail	11	7,781,815	2.53%
Lightning	12	2,042,774	0.66%
Mysterious Disappearance On Premises	13	151,225	0.05%
Mysterious Disappearance Off Premises	14	113,876	0.04%
Removal	15	2,898	0.00%
Riot & Civil Commotion	16	554	0.00%
Smoke	17	1,900,049	0.62%
Theft (burglary or robbery) From Auto	18	224,399	0.07%
Theft (burglary or robbery) On Premises	19	4,508,973	1.46%
Theft (burglary or robbery) Off Premises	20	202,750	0.07%
V & M M	21	740,479	0.24%
Vehicle	22	2,112,517	0.69%
Water Damage (Excluding Flood)	23	30,215,719	9.81%
Wind	24	55,369,163	17.98%
All Other Physical Damage	25	4,970,174	1.61%
All Other Bodily Injury	26	14,237,678	4.62%
All Other Property Damage	27	2,491,308	0.81%
Fire Legal	28	7,116	0.00%
All Other Liability	29	488,965	0.16%
Medical	30	549,845	0.18%
Collapse, other than sinkhole	32	814,343	0.26%
Smoke Wood Stove	34	53,066	0.02%
Ice Dam	35	342	0.00%
Off Premises Power Failure	45	500	0.00%

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Homeowner Cause Of Loss	Code	Amount $	Ratio
Water Accidental Discharge	47	4,962,171	1.61%
Sump Pump Failure	48	5,624	0.00%
Mold Property	51	36,986	0.01%
Service Line Failure	52	80,750	0.03%
Mold Liability	55	20,000	0.01%
Mechanical / Equipment Breakdown	56	64,927	0.02%
Identity Theft	57	18,222	0.01%
Dog Bite	61	3,079,910	1.00%
Fall Down	62	6,280,944	2.04%
Personal Injury	63	170,000	0.06%
Fire Wood Stove	71	2,862,930	0.93%
Fire Spontaneous Combustion	72	2,904	0.00%
Fire Children Playing with Matches	73	356,451	0.12%
Fire Careless Smoking	74	744,930	0.24%
Fire Fireplace	75	1,582,260	0.51%
Fire Appliance	76	691,902	0.22%
Fire Heating System	77	655,321	0.21%
Fire Electrical	78	8,161,793	2.65%
Fire Accidental	79	3,661,631	1.19%
Fire Arson	80	457,177	0.15%
Lead Liability	84	75,000	0.02%
Electrical Surge	85	444,657	0.14%
Falling Object	86	1,152,481	0.37%
Smoke Oil Furnace	87	1,862,484	0.60%
Weight of Ice, Sleet and Snow	89	5,617,733	1.82%
Water Sepage Roof & Walls	90	4,419,209	1.43%
Altercation	91	15,000	0.00%
Pollution Other Liability	95	6,661	0.00%
		307,970,294	
All Fire		132,997,064	43.19%

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Published quarterly for friends and affiliates of Underwriters Rating Board

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As a not for profit insurance rate service organization, Underwriters Rating Board has a history of over 75 years of continuous service to the insurance industry. Our aim is to be recognized as a pro-active, market driven supplier of a broad array of individualized services to insurers. The long term personal and professional relationship between URB and its member companies is its greatest asset.

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