



# The URB Insider



## URB Welcomes New Employee

We at URB are pleased to announce that Daniel Eldeen has joined the URB staff on December 21, 2015 as a Product Development Specialist.

Dan spent his last nine years working for State Farm Insurance where he held a variety of positions in the fire and auto claim departments. Dan handled first and third party losses during his tenure for that company.

After an introductory period in his new position, Dan will be using the skills he



developed during his years in claims to research and write forms products at URB. Dan will also assist as a member of the URB team with existing forms series projects, proprietary company forms projects, answering coverage questions, doing forms research and researching and

writing articles for the *URB Insider*.

Dan is a graduate of the State University of New York at Albany. He lives in Niskayuna with his wife and one-year old daughter. In his free time, Dan enjoys skiing, hiking and working on his house.

We welcome Dan to our team and wish him the best of luck in his new position here. Dan may be reached at URB and his email is:

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

Check out Dan's article "On The Hot Topic Of Drones" in this edition of the *URB Insider*. ♦

### Volume 13, Issue 4 Winter, 2015-2016

<i>URB Welcomes New Employee</i>	1
<i>NY Court Of Appeals Case</i>	2
<i>NY Cases</i>	3-4
<i>On The Hot Topic Of Drones</i>	5
<i>Changes at Central Co-Operative</i>	6
<i>Vedder Software Group ITV Solution</i>	6
<i>Largest BOP Classes For Years 2009-2014</i>	7
<i>Forms Update</i>	8
<i>Legislative Note</i>	8
<i>URB Services Corp.</i>	8

**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. ♦**

## NY Court Of Appeals Case

### Third Party Liability On Hospital That Fails To Warn Drugged Patient Who Causes Motor Vehicle Accident

This action arises from a motor vehicle accident that occurred after nonparty Lorraine A. Walsh was treated at defendant South Nassau Communities Hospital by defendants Regina E. Hammock, D.O., and Christine DeLuca, RPA-C, who are medical professionals employed by defendant Island Medical Physicians, P.C. As part of Walsh's treatment, defendants intravenously administered to Walsh an opioid narcotic painkiller and a benzodiazepine drug without warning her that such medication either impaired or could impair her ability to safely operate an automobile. Shortly thereafter, Walsh drove herself from the hospital, and while allegedly impaired from the medication, she was involved in a motor vehicle accident. The automobile she operated crossed a double yellow line and struck a bus driven by plaintiff, Edwin Davis.

In this case of *Davis v South Nassau Communities Hosp.*, 2015 NY Slip Op 09229, the Court of Appeals confronted the question whether third party liability can attach when a hospital administered drugs to a patient, and then released her, in an impaired state, without any warning that the drugs affected or could have affected her ability to safely operate a motor vehicle. More plainly stated, the main question in this case is whether defendants owed a duty to the plaintiff, Edwin Davis, and his wife, Dianna, who has a derivative claim, to warn that the medication the defendants gave to Walsh impaired or could have impaired her ability to safely operate a motor vehicle following her departure from the hospital.

The Court discussed that in addressing the modification of a legal duty, its reach must be lim-

ited by what is foreseeable. They went on to point out that expansion of a duty is a power to be exercised cautiously, but it is a power that must be used if the changing needs of society are to be met, and then they quoted Judge Cardozo from *MacPherson v Buick Motor Co.*, 217 NY 382, 391 [1916].

For the reasons outlined in the opinion, the Court concluded that where a medical provider has administered to a patient medication that impairs or could impair the patient's ability to safely operate an automobile, the medical provider has a duty to third parties to warn of that danger. There is also a dissent in the opinion.

To read the case in its entirety, please click the link below. ♦

[http://www.nycourts.gov/reporter/3dseries/2015/2015\\_09229.htm](http://www.nycourts.gov/reporter/3dseries/2015/2015_09229.htm)



## NY Cases Facebook Discovery Not Unlimited

This case, *Forman v Henkin*, 2015 NY Slip Op 09350, is an appeal heard in the Appellate Division, First Department from an order of Supreme Court, New York County entered on March 19, 2014. The Supreme Court granted defendant's motion to compel to the extent of directing plaintiff to produce all photographs of plaintiff privately posted on Facebook after the accident that do not show nudity or romantic encounters, and authorizations for defendant to obtain records from Facebook showing each time plaintiff posted a private message after the accident, and the number of characters or words in those messages. The Appellate Division, First Department modified the order on the law and facts, to vacate those portions of the order directing plaintiff to produce photographs of herself posted to Facebook after the accident that she does not intend to introduce at trial, and authorizations related to plaintiff's private Facebook messages, and otherwise affirmed.

In this action, plaintiff alleges that while riding one of defendant's horses, the stirrup leather attached to the saddle broke,

causing her to lose her balance and fall. Plaintiff claims defendant was negligent because he failed to properly prepare the horse for riding and neglected to maintain and inspect the equipment. She alleges the accident resulted in cognitive and physical injuries that limit her ability to participate in social and recreational activities. She testified at her deposition that she maintained a Facebook account prior to the accident, but it was deactivated at some point after.

Defendant sought an order compelling plaintiff to provide an unlimited authorization to obtain records from her Facebook account; the motion court granted the motion to the extent previously described and plaintiff appealed.

The appellate court discussed what is provided under the scope of CPLR 3101(a) and that it includes full disclosure of all matter material and necessary in the prosecution or defense of an action. The appellate court points out that it is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or

information bearing on the claims. Discovery is improper when it is used to justify a fishing expedition.

The appellate court pointed out they have consistently applied these principles in the context of discovery requests seeking a party's social media information. In citing relevant case law, the appellate court points out that they have denied such requests because the mere fact that plaintiff used Facebook was an insufficient basis to provide defendant access to the account. Vague and generalized assertions that information in the plaintiff's social media sites might contradict the plaintiff's claims of emotional distress were not a proper basis for such disclosure. The appellate court went on to point out other Departments of the Appellate Division have also required some threshold showing before allowing access to a party's private social media information.

The dissent wanted to reconsider the appellate court's recent decisions.

To read the case in its entirety, please click the link below. ♦

## No Duty Means No Negligence

The case of *Daily v Tops Mkts., LLC*, 2015 NY Slip Op 09336, is an appeal before the Appellate Division, Third Department, from an order of the Supreme Court, entered April 14, 2014 in Che-mung County, which granted a motion by defendant Tops Mar-kets, LLC to dismiss the com-plaint against it.

The decedent, Joel States, was consuming alcohol and drugs with several companions when he passed out and appeared to have trouble breathing at about 1 a.m. on January 20, 2013.

He was unconscious and was put in his own car by his compan-ions and driven to the parking lot of defendant Tops Markets, LLC. They reportedly told Tops' em-ployees at about 1:30 a.m. that there was someone in the parking lot who was unconscious and in need of emergency medical care. They made no effort themselves to contact police or emergency medical personnel. Instead, the companions left on foot, and the Tops' employees took no action. States died during the night al-legedly of the combined effects of intoxication and hypothermia.

Plaintiff is the administrator of decedent's estate and commenced this action against decedent's companions and Tops. As to Tops, plaintiff asserts that its employ-ees negligently failed to summon emergency assistance for the de-cedent. Tops moved to dismiss the complaint against it for fail-ure to state a cause of action. Su-preme Court granted the motion and plaintiff appeals.

The appellate court, citing precedent, discussed that in any negligence action, the threshold issue is whether defendant owed a legally recognized duty to the plaintiff. It was discussed that this is frequently a difficult task and despite sympathetic facts courts must be mindful of the precedential and the consequen-tial future effects of their rulings, and limit the legal consequences of wrongs to a controllable de-gree. The appellate court dis-cussed that moral duty does not equate with legal duty and the general rule is that one does not owe a duty to come to the aid of a person in peril.

The appellate court concluded that although the Tops store was

open to shoppers this did not nec-essarily create an affirmative duty to come to the aid of anyone who was anywhere on the prop-erty no matter how unrelated such person's presence was to Tops' function as a grocery store. The appellate court pointed out that the decedent was not a cus-tomer of Tops and that neither he, nor his companions, were on the premises for any activity re-lated to Tops' business. Tops' em-ployees did not participate in the conduct of decedent's compan-ions, and it is not alleged that Tops' employees saw or had any contact with decedent on the premises. The Tops' employees did nothing to put decedent in a worse position than the one in which his companions left him.

Under these circumstances, the appellate court agreed with Su-preme Court that notwithstand-ing a moral obligation; Tops was not under an affirmative duty to assist the decedent. The appellate court found the remaining argu-ments unavailing.

To read the case in its entirety, please click the link below. ♦

## On The Hot Topic Of Drones

Unmanned aerial vehicles (UAV) more commonly referred to as drones, have been a hot topic this year due to a few high profile cases in the news involving private citizens flying them in restricted air space like the White House and the New York State Capitol. The subject is due to get even more attention now that the Federal Aviation Administration (FAA) estimated around 1 million drones were sold for Christmas 2015. Of those given as gifts this past year, they could range in size, power and quality greatly. Some of the least expensive can be found under \$20 and only fly indoors. Others can go for well over \$1000 to reach high outdoor altitudes equipped with cameras, GPS and other recording devices.

It's important to remember not every battery or gas operated flying object is a drone. For something to qualify as a drone it must have the presence of an autopilot capable of autonomous flight; whereas radio-controlled aircraft, also referred to as model airplanes, do not. Dr. John Villaseñor, electrical engineer, UCLA professor and senior fellow at the Center for Technology Innovation, Brookings Institution was interviewed by Neal Conan of NPR regarding drones. Dr. Villaseñor had the opinion "I think it's very important to emphasize that model aircrafts are not drones. Model aircraft are flown within the line of sight of, and under the control of a pilot at all times. And so whatever definition someone might adopt of drones, that definition should not include model aircraft."

The FAA has categorized drones into 5 groups by size, altitude of operation, and payload. According to their defined criteria, most civilian drones will fall into groups 1 or 2.

Group 1 – Under 20 lbs., operating altitude under 1,000 feet. Battery powered and can carry small payloads with an operating time between 20 minutes and 2 hours.

Group 2 – Weighs 21-50 lbs. and can operate up to 3,500 feet. Can be battery, gas or diesel, operated up to 24 hours. Limited payload capacity, but can be equipped with high quality camera and communication systems.

Group 3 can be up to 1,320 lbs., group 4 exceeds 1320 lbs. and may be optionally piloted, and group 5 is typically used by the military.

Beginning December 21, 2015 all civilian drones weighing more than .55 pounds must be registered with the FAA and identified with markings so authorities can find the owner. The registration is good for three years and comes at a cost of \$5. Owners of drones purchased before December 21, 2015 have until February 19, 2016 to register them, and anyone who buys a drone after December 21, 2015 must register it before flying it outdoors.

The increased use and affordability of drones is expected to have an impact on the insurance industry. On the private citizen and business, the exposure will come when the operator of the drone unexpectedly crashes into a neighboring building, vehicle, pet, or person. Perhaps the larger

exposure will be seen in the form of personal injury liability claims for invasion of privacy, when photos or videos of unintended objects and people are broadcast from the drone's powerful camera.

There are several bills proposed in the New York State Senate seeking to regulate governmental, private and commercial use of drones and their recording devices, as well as outlining the criminal consequences of violating those laws, many of which will result in felony charges. Largely the focus of the bills is safety, security and privacy.

Bill S4537 clarifies the civil rights law in relation to the use of drones. The bill allows for non-governmental use for "lawful purposes, including recreational or hobby purposes," but completely bans the use of a UAV by any person for "unwarranted and unauthorized use of drones or other unmanned aircrafts to conduct surveillance upon them inside their homes or place of worship or within the closed confines of their property or other locations, where a person would have an expectation of privacy."

The question becomes will insurers be prepared to cover these losses and how will they be handled if the actions of the insured result in criminal charges? The answer is entirely dependent on current policy language regarding the definition of "aircraft", potential exclusions and applicable endorsements until the exposure develops standardized handling and policy language. ♦

## Changes At Central Co-Operative

Some management changes recently took place at Central Co-Operative Insurance Company in Baldwinsville, New York.

On December 31, 2015 Dave Fraser stepped down as President and Claims Manager of the Company, where he has worked for over twenty years. Dave has spent his entire career in claims, first with the Hartford and then as an independent,

before he joined Central Co-Operative.

Dave will be staying on at the Company as a claim consultant, working in a remote capacity, and he will remain on the Board of Directors. Dave also plans to travel a great deal with his wife, Susie, and spend more time with their 12 grandchildren.

Rich Bente took over the helm at Central Co-Operative on Janu-

ary 1, 2016. Rich was formerly with Guy Carpenter for 28 years.

We at URB want to take this opportunity to wish Dave all the best of luck in his retirement and in all his future endeavors.

In the same spirit, we at URB want to take this opportunity to welcome Rich and wish him the best of luck in his new position at Central Co-Operative. ♦

## Vedder Software Group's Insurance To Value Solution Designed To Assist URB Companies

Vedder Software Group assisted URB to provide an Insurance to Value solution for its companies approximately ten years ago. Its first iteration was a combination paper product and an Excel spreadsheet. URB distributed the products to its carriers to assist company agents, underwriters and outside inspection companies to produce Insurance to Value calculations, for issuance of policies by its members.

Approximately seven years ago Vedder Software developed a PC and Client server version of its Insurance to Value solution and has licensed it to URB member companies, their outside inspection companies and independent

insurance adjusters. Over the years the product has become a staple for Insurance to Value calculations by these groups.

***“Dryden Mutual has been very pleased with the ITV Wizard for many years. It has been well received by our agents, underwriters and inspection partners. We look forward to working with the web based product and integrating with our new policy management system.”***

**Peter A. Thorp  
Sr. Vice President  
& Marketing Manager  
Dryden Mutual Insurance Co.**

A few years back several member companies suggested they would like Vedder Software Group to develop an online web

based version of the product as well. Thus Vedder Software Group once again rose to the challenge and has recently launched a new web based Insurance to Value solution called the **ITV Wizard™ online version**. The product has gained positive attention and is in the process of implementation by this same group.

Anyone interested in these solutions can contact Stephen Vedder at Vedder Software Group, Ltd. 630 Salvia Lane, Schenectady, New York 12303, telephone 518-356-3698. Trials of the online version can be found at **itvwizard.com**. ♦

## Largest BOP Classes For Years 2009—2014 URB Combined Companies

	Class	Code	Earned Premium	Actual Incurred Losses 3/15	Ratio
1	Apartments 5-10 Family	013	\$23,509,661	\$15,467,826	65.8%
2	Restaurants	130	17,477,775	7,861,525	45.0%
3	All Other Mercantile	199	11,411,329	3,163,564	27.7%
4	Light Hazard Service	219	9,492,973	2,968,784	31.3%
5	Offices and Banks	202	7,840,874	1,667,584	21.3%
6	Camps	508	4,985,115	2,277,985	45.7%
7	Food Products	115	3,892,088	2,522,977	64.8%
8	Self Service Laundries	218	1,871,669	1,366,656	73.0%
9	All Other Habitational	099	1,761,047	205,407	11.7%
10	Pizza with Cooking	139	1,584,701	820,111	51.8%
11	Delicatessen w/ Cooking Household	133	1,454,448	725,985	49.9%
12	All Other Non Manufacturing	299	1,381,668	945,504	68.4%
13	Churches & Synagogues	215	1,350,413	191,421	14.2%
14	Wearing Apparel	113	1,228,640	259,417	21.1%
15	Restaurants w/o Fire Protection	117	1,155,753	3,448,366	298.4%
16	Motels & Hotels <11 Units	248	1,065,000	546,973	51.4%
17	Light Hazard	220	883,969	109,656	12.4%
18	All Other Warehouses	399	849,299	239,032	28.1%
19	Pizza with Baking	138	788,496	81,409	10.3%
20	Apartments 11-30 Units	014	781,043	130,388	16.7%
21	Alcoholic Beverages (Liquor Stores)	114	767,823	135,265	17.6%
22	Apartments Mercantile 5-10 Units	020	752,995	94,042	12.5%
23	Furniture & Home Furnishings	123	658,940	30,213	4.6%
24	Boat Houses Commercial	505	646,187	44,781	6.9%
25	Delicatessen with Cooking	142	610,579	240,259	39.3%
26	Hotels with Dwelling Occupants	522	601,814	73,199	12.2%
27	Electrical Goods	121	578,071	32,050	5.5%
28	Delicatessen with No Cooking	132	553,575	163,941	29.6%
29	Laundries Other Than Self Service	217	519,338	154,208	29.7%
30	Clubs NOC	205	495,245	40,035	8.1%

This information was derived from the URB statistical data.

## Forms Update

The Exclusions of Unmanned Aircraft were submitted on December 21, 2015 to the DFS for approval. There are two exclusions: the LS-122 Ed. 12/15 Exclusion of Unmanned Aircraft for use with the 9/02 LS series; and the LS-123 Ed. 12/15 Exclusion of Unmanned Aircraft for use with the 1/88 LS series. URB will keep you posted as to the status of these filings as soon as URB receives further information from the DFS. ♦

## Legislative Note

### Summary Judgment Proof– Expert Opinion

As of December 11, 2015 CPLR §3212(b) provides where an expert affidavit is submitted in support of or in opposition to a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange per what is required in CPLR §3101(d)(1) was not furnished prior to the submission of the affidavit. As a result, the affidavits must be considered rather than the trial court having discretion to reject them because the expert's identity was not first disclosed. ♦

## The URB Insider

Published Quarterly by  
Underwriters Rating Board  
2932 Curry Road  
Schenectady, N.Y. 12303  
Phone: 518-355-8363 Fax: 518-355-8639

Published for friends and affiliates of URB

Creator/Editor: Kimberly Davis, Esq., CPCU

Contributors This Issue:

Arthur Adams, CPCU

Dan Eldeen

Jaime Bashaw

Guest Contributor This Issue:

Stephen Vedder

Proof Editors: Mary Shell, CPCU

Jean French, CPCU

Arthur Adams, CPCU

Dan Eldeen

Jaime Bashaw

Copyright © 2016

Underwriters Rating Board

All Rights Reserved.

Copyright claimed only as to original work,  
no portion of original work may be repro-  
duced without prior written permission.

**We're On the Web!**  
**URBRATINGBOARD.com**  
E-mail us at:

arthur@urbratingboard.com

dan@urbratingboard.com

jaime@urbratingboard.com

jean@urbratingboard.com

kim@urbratingboard.com

mary@urbratingboard.com

tim@urbratingboard.com

## Get Affordable, Quality Printing From URB Services Corp.

### Printing Services Include:

- Annual Statements
- Stationery
- Business Cards
- Perforated Billing Paper
- Brochures and more...

### You Get:

- Fast Turnaround
- Exceptional Quality
- Wide Paper Variety
- Finishing Services
- Outsourcing Available

**URB Services Corp. is the only com-  
pany to go to for all your printing  
needs!**