The URB Insider

A Quarterly Publication of Underwriters Rating Board

At The U.S. Supreme Court

The U.S. Supreme Court has heard a variety of cases during the 2015-2016 term which will come to a close at the end of June. In the interim, the Court is in the process of issuing case decisions.

Some of the cases the justices have recently decided include issues related to the Affordable Care Act, Article III Standing, Attorney General Special Counsel Appointments and Federal Jurisdiction Under Section 27 of the Securities Exchange Act.

Of these decisions, one of the most widely disseminated is the case of *Zubik v Burwell 14-148,* which was decided on Monday, May 16, 2016. This case and six other similar cases that were consolidated under this title challenged the contraceptive mandate of the Affordable Care Act, the signature legislative achievement of President Obama.

The challenge came from religiously affiliated groups who objected to providing contraceptives to their employees .

Following oral argument, the Court requested supplemental briefing. In light of the positions asserted by the parties in their supplemental briefs, the Court vacated the judgments below and remanded to the respective United States Courts of Appeals for the Third, Fifth, Tenth and D.C. Circuits. In not deciding the issues on the merits, the Court referenced the gravity of the dispute and the fact that the parties have clarified their positions and should be able to arrive at an approach.

More information about U.S. Supreme Court cases will be in future issues of The URB Insider.◆

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NY Court Of Appeals Case

What Constitutes An Occurrence In A Class Action Suit

The case of *Selective Insurance Co. of America v County of Rensselaer*, 2016 NY Slip Op 01001 [26 NY3d 649], was heard in the Court of Appeals to determine if a class action civil rights suit constituted one occurrence or multiple occurrences under the defendant's liability policy.

The County of Rensselaer had a policy of strip searching all people sent to its jail regardless of the crime they were charged with. At that time, such practice was determined to be unconstitutional by Second Circuit precedent if the alleged crime was a misdemeanor or jail authorities had no reasonable suspicion of concealed weapons or contraband.

In 2002 Nathaniel Bruce and over 800 other arrestees commenced a class action suit against the County in federal court. The plaintiffs in the suit were all strip searched between 1999-2002. During those years the County had a policy with Selective with a liability deductible of $10,000 in all years except 2002 when it was $15,000. Selective agreed to provide coverage for the suit and provided defense for the County. Selective and the County agreed to settle with Bruce for $5,000, with $1,000 going to each additional plaintiff, as well as the attorney fees of $442,701.74.

Selective agreed to pay the sums settled on, but the County refused to pay any more than a single deductible of $10,000. Selective commenced this action against the County, arguing that each class member was subject to a separate deductible.

The policy through Selective defined 'occurrence' as "an event, including continuous or repeated exposure to substantially the same general harmful conditions, which results in… 'personal injury'… by any person or organization and arising out of the insured's law enforcement duties."

In affirming the order of the appellate court, the Court of Appeals determined the language for occurrence was unambiguous and made clear it covers personal injuries to an individual person as a result of a harmful condition. The definition does not permit the grouping of multiple individuals who were harmed by the same condition, unless that group is an organization, which they were not in this case. The harm was experienced as an individual so each of the strip searches were a single occurrence.

Important to note the Selective policy defined four specific events that would constitute a single occurrence: (1) riot or insurrection, (2) a civil disturbance resulting in an official proclamation of a state of emergency, (3) a temporary curfew, or (4) martial law. None of these descriptions fit the criteria of the class action suit brought against the County.

Regarding the attorney fees owed in the class action suit, Selective argued the fees should be divided equally among all the members of the suit, while the County argued it should only apply to the named plaintiff Nathaniel Bruce so that only one deductible applied. The Court of Appeals determined the policy language was ambiguous as to how attorney fees would be applied in a class action, so it sided with the County and allowed the fees to be allocated fully to the named plaintiff.

Click the link below to read this case in its entirety. ◆

http://www.nycourts.gov/reporter/3dseries/2016/2016_01001.htm

NY Cases

Appellate Court Reverses Decision On Electronic Data

The case of *RSVT Holdings, LLC v Main Street America Assurance Company*, 2016 NY Slip Op 01230 [136 AD3d 1196], was heard in the Appellate Division, Third Department. It was appealed from an order of the Supreme Court entered October 23, 2014 in Schenectady County.

The plaintiffs are the owners of a group of fast food restaurants who store their customers' credit card information on their own computer network. Their network was infiltrated by unknown persons, and customers' credit card information was stolen and used to make fraudulent purchases. Nonparty Trustco Bank subsequently commenced action against RSVT Holdings alleging negligence in exercising care to protect the information of Trustco cardholders, which caused Trustco to sustain damages related to reimbursement of fraudulent charges.

RSVT Holdings sought liability coverage under their businessowners' policy issued by defendant Main Street America Assurance Company to defend them against Trustco's action. Defendant denied coverage asserting that the policy excludes from coverage third party claims arising out of the loss of electronic data.

Plaintiffs commenced action against defendant following the denial of coverage. The trial court granted summary judgment to the plaintiff stating Main Street must provide a defense for the suit from Trustco.

Main Street appealed the ruling and the appellate court reversed the judgment in favor of the defendant upholding their original denial of coverage in the use of the exclusion for electronic data. The appellate court agreed with defendant that Trustco's claim for damages arising out of plaintiff's negligent handling of electronic data is not a claim for property damage under the policy and is excluded from coverage.

The case documents there was no disagreement that Trustco's action involved the theft and misuse of electronic data. Plaintiff argued a defense was owed under a section of the policy that provided coverage for property damage.

However, that referenced section limits coverage for "direct physical loss of or damage to" plaintiff's own property. In addition, the property damage section of the policy did not have any language indicating it covers the claims of third parties.

Click the link below to read this case in its entirety. ◆

http://www.nycourts.gov/reporter/3dseries/2016/2016_01230.htm

Can Self-Defense Trigger The Intentional Acts Exclusion?

The case of *Mark A. Leo v New York Central Mutual Fire Insurance Company*, 2016 NY Slip Op 00846 [136 AD3d 1333], was heard in the Appellate Division, Fourth Department, and appealed from an order of the Supreme Court entered November 4, 2014 in Oneida County in a declaratory judgment action.

The judgment granted the motion of defendant for summary judgment, dismissed the complaint and denied the cross motion of plaintiff for partial summary judgment. The appellate court modified the judgment on the law by reinstating the complaint to the extent that it seeks a declaration and granted judgment in favor of the defendant. It was adjudged and declared that plaintiff was not entitled to indemnification from the defendant with respect to the underlying action, and as modified, the judgment was affirmed.

The underlying action seeks damages for the wrongful death and conscious pain and suffering of Anthony J. Sciortino who was killed in a violent altercation with plaintiff. Leo and Sciortino had a volatile relationship. They agreed to meet one day, each bringing a weapon. Leo brought a baseball bat to the meeting, and claimed he had no intention of using it, but didn't want to be caught without one. According to Leo, Sciortino brought a metal pipe to the meeting and took the first two swings at Leo grazing his head. In defense, Leo swung the bat hitting Sciortino twice in the head and neck causing injuries from which Sciortino later died.

Leo was charged with manslaughter in the 2nd degree and successfully argued self-defense resulting in an acquittal. Sciortino's estate later filed the underlying wrongful death action against Leo. New York Central Mutual provided a defense for their insured Mark Leo who had a homeowner's insurance policy with them. Leo was ordered to pay $50,000 to the estate of the decedent with no stipulation on the record specifying if there was any negligence or intentional tort committed.

New York Central Mutual disclaimed any duty to indemnify for the wrongful death citing the exclusion for intentional acts as their justification. In Leo's policy, "occurrence" means an "accident" and had an exclusion for bodily injury that was "expected" or "intended" by the insured. In addition, the exclusion had been amended to remove any coverage for acts of self-defense.

In response to the refusal to indemnify, Leo filed the declaratory judgment action against New York Central Mutual. The court decided to uphold the defendant's disclaimer and sided with New York Central Mutual. Part of the decision involved whether the injuries to Sciortino were expected or intended, ultimately determining that "self-defense is merely a motivation or justification for conduct that would otherwise be intentional and unlawful". It is important to note that this case made a distinction that self-defense could absolve criminal or civil liability but did not do anything to create an exception to the intentional act exclusion.

Click the link below to read this case in its entirety. ◆

http://www.nycourts.gov/reporter/3dseries/2016/2016_00846.htm

Autonomous And Driverless Vehicles A Reality

Autonomous and completely driverless vehicles will be a reality for this generation. With this new technology comes plenty of questions surrounding concerns with safety, liability, and where the insurance industry fits in with this new world.

Technology barriers have already been cleared, and alliances are already being formed. Google has been testing fully driverless vehicles since 2012 and has now partnered with Ford. GM has recently invested $500 million with ride sharing service Lyft to build a fleet of ride sharing hubs, and in the future hopes to have an "autonomous on-demand network" of vehicles. Technology company Nvidia has created a computer going into Volvos that has the computing power of 150 Macbooks. According to Nvidia, the car utilizing their technology will have enough data processing power to read street signs, spot pedestrians, and process information better than humans.

The next hurdle to leap is that of legality. The laws that would allow autonomous vehicles are largely determined on a state by state basis, which complicates matters. For example, Tesla's new Autopilot feature rolled out at the end of 2015, when activated, allows the car to almost entirely take over in certain situations with the ability to accelerate, brake, steer, and take evasive maneuvers. Autopilot is considered an advanced driver's aid and not autonomous since a human must remain in the driver's seat and still operate certain controls. Where it gets murky is in places like New York which requires drivers to keep at least one hand on the wheel at all times, rendering something like Autopilot of questionable use. If systems requiring less and less human input are going to be permitted, the regulations will have to change.

A KPMG report titled "Marketplace of Change: Automobile Insurance in the Era of Autonomous Vehicles" predicts a decline in accident frequency with the adoption of autonomous vehicles, and the U.S. personal auto insurance industry could shrink by 60% in the next 25 years. This would result in huge savings to consumers but also a big loss in profits to carriers that would reshape the face of the industry. The report believes many carriers will go out of business entirely and only those prepared for the future will survive.

With 90% of accidents being caused by driver error, KPMG estimates an 80% reduction in accident frequency by 2040 to .009 incidents per vehicle and a drastic reduction in loss costs. However, they also predict per accident expense could increase from $14,000 to $35,000 based on the increased cost of vehicles and their expensive components.

The changes for the insurance industry won't be all negative. The prediction among many is there will be a shift in demand with less personal lines business and an increase in commercial lines as consumers come to rely on the growing transportation services industry. More urban dwellers will go without owning a car entirely and families will decrease the size of their fleet in favor of using rental and ride sharing services. Perhaps someday you will be able to request a rental on your phone and it will show up driverless to your doorstep.

For the time being, these predictions are educated guesses at best. Unknown factors yet to be developed that will likely exist at some point are improvements to infrastructure such as sensors in the road, legislation regarding rules and regulation, and a standardized vehicle-to-vehicle communication system where cars will talk to each other to relay information about position, speed, and their next maneuver.

These unknown factors will be a particular challenge to actuaries when it comes to setting rates. Currently, actuaries typically rely on well-defined data sets upon which to base their decisions, but with this rapidly emerging technology the data simply doesn't exist. ◆

Largest GL Classes For Years 2010-2014
URB Combined Companies

	Class	Class Code	Earned Premium	Actual Incurred Losses as of 3/2015	Ratio
1	Dwelling 1 Family	02001	13,877,842	4,501,998	32.44%
2	Apartments	01001	9,631,064	2,527,773	26.25%
3	Restaurants	07001	9,295,198	6,352,191	68.34%
4	Taverns	07003	8,259,984	3,511,818	42.52%
5	Dwelling 2 Family	02005	7,600,592	2,386,191	31.39%
6	Service NOC	37052	3,598,381	314,695	8.75%
7	Building or Premises NOC	12019	2,585,400	1,398,752	54.10%
8	Clubs Lodges NOC	12031	2,394,913	249,537	10.42%
9	Dwelling 3 Family	02009	2,366,625	462,836	19.56%
10	Retail NOC	06054	1,875,276	187,480	10.00%
11	Logging & Lumbering	40033	1,797,246	184,789	10.28%
12	Roofing	36028	1,457,202	575,289	39.48%
13	Mobile Home Parks	40085	1,346,763	1,092,191	81.10%
14	Dwelling 4 Family	02010	1,283,528	230,312	17.94%
15	Storage Building	12057	1,195,094	166,138	13.90%
16	Office	05009	1,090,679	495,146	45.40%
17	Beauty Parlor	12010	921,419	161,642	17.54%
18	CPL 1 Family	14001	884,077	109,797	12.42%
19	Sales & Service	37030	875,775	2,080	0.24%
20	Carpentry NOC	36007	869,253	102,799	11.83%
21	Welding & Cutting	36033	845,571	375	0.04%
22	Swimming Pools	06060	814,033	9,300	1.14%
23	CPL 2 Family	14003	789,562	-	0.00%
24	Vacant Building	12059	741,624	651,525	87.85%
25	Farm Residence	01205	724,800	23,910	3.30%
26	Grocery Retail NOC	06034	698,183	837,373	119.94%
27	Motel W/O Pool or Beach	04006	682,632	44,007	6.45%
28	Excavation	35022	622,346	93,494	15.02%
29	Delicatessen	06026	609,577	617,066	101.23%
30	Clubs Civic No Building Prem	12028	541,599	1,477	0.27%

This information was derived from the URB statistical data.

URB And NYIA Representatives Honored

Timothy Curren, CPCU, of Underwriters Rating Board (URB) and Marc Craw, Esq., of New York Insurance Association (NYIA) were recently recognized by City & State Reports for their Outstanding Achievement in Promoting Community Engagement throughout New York's Insurance Industry.

The City & State Reports annual Corporate Social Responsibility Awards in Banking, Finance & Insurance recognize top corporate citizens in New York's banking, finance and insurance sectors. Timothy and Marc received their awards at a breakfast held this year on May 23, 2016 at New York Law School.

Timothy Curren, CPCU,
Manager of URB
is shown holding his recent award.

In addition to the awards presentation, the event featured a thought leadership panel discussion on corporate social responsibility in finance today.

URB is proud to provide financial security to New Yorkers and is dedicated to serving the insurance industry and local communities across the state.

URB would like to take this opportunity to congratulate both Timothy and Marc on their achievement.◆

Marc Craw, Esq., of NYIA, Timothy Curren, CPCU of URB and John Masselli, Jr., CPCU, CIC, AAI, AIS, AU, General Manager of New York Mutual Underwriters (NYMU) are shown at the City & State Reports Annual Corporate Social Responsibility Awards.

Marc Craw, Esq., of NYIA and Timothy Curren, CPCU of URB are shown at the City & State Reports Annual Corporate Social Responsibility Awards.

Note: Photographs courtesy of Cassandra Anderson, CAE, Associate Vice President of NYIA.
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2932 Curry Road
Schenectady, N.Y. 12303
Phone: 518-355-8363 Fax: 518-355-8639

Published for friends and affiliates of URB
Creator/Editor/Contributor:
Kimberly Davis, Esq., CPCU
Contributors This Issue:
Arthur Adams, CPCU
Dan Eldeen, AIC
Proofreading Assistants:
Arthur Adams, CPCU
Dan Eldeen, AIC
Jaime Bashaw
Publishing Administrators:
Mary Shell, CPCU
Jean French, CPCU

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

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