Large Verdicts, New Laws and Coverage Decisions—Across the Lines

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From cars, trucks and tractors to pollutants, guns and even geese, this edition of Casualty Matters provides more variety than most past issues. Almost every type of risk is affected by one or more of the developments we discuss here.

Of particular interest, we point to rulings, most from the state supreme or appellate courts, that clarify liability and/or coverage for:

> Agritainment Work—Employee or independent contractor, Workers’ Comp or Employer Liability?

> Pollution and Asbestos Exclusions—Did they hold up?

> Guns and Homeowners—What is the duty of care?

> Defamation and Nonconcurrent Policies—What are the dropdown risks?

> Rental Car Liability—How does the Graves amendment apply to related companies?

We also highlight several recent and very large commercial lines verdicts that could involve the types of risks in your book—condo associations, truckers, and employers with intoxicated employees. Of course, the last category could be any type of company.

For personal lines, our verdict section focuses on defamation claims against individuals that could well have personal injury coverage under Homeowners and/or Personal Umbrella policies. A coverage decision following a sexual assault claim is a good example of how sometimes only the Personal Umbrella is triggered.

We hope you find something of interest in this edition. If you don’t find what you are looking for here, just give your Gen Re representative a call. We may have something that did not make the cut but is still of value to you.
Junk Fax Claims—Illinois and Pennsylvania—No Telephone Consumer Protection Act (TCPA) Coverage

The courts continue to uphold the ISO and similar proprietary exclusions for junk faxes, calls, texts and emails, despite interesting arguments to avoid its application. The Illinois case was a class action, as are many on this topic, and the outcome turned on how the court interpreted and applied the exclusion for Distribution of Material in Violation of Statutes. The exclusion in the primary and umbrella policies tracked with ISO wording that was current at the time. The court followed Illinois precedent, and rejected any argument that conversion of property did not fall within the exclusion. Since conversion arose out of the statutory violation of sending unsolicited faxes, it was also excluded. Addison Automatics v. Hartford, 2015 U.S. Dist. LEXIS 24526.

The Pennsylvania class action over 18,000 junk faxes did not even turn on the exclusion. Here, the federal court rejected coverage of the privacy claim, holding that junk faxes do not violate privacy interests in secrecy. Other states take a broader view of privacy claims and coverage, finding that violation of seclusion is a covered tort, but not in Pennsylvania. Auto-Owners v. Stevens & Ricci, 2015 U.S. Dist. LEXIS 43085.

Pollution Exclusions and Causation—Wisconsin and Michigan—Different Outcomes

More favorable decisions from Wisconsin cement the law on pollution exclusions. In this case, an excavation worker hit a natural gas pipeline and escaping gas caused an explosion. The contractor sought coverage under two policies—a GL and an Environmental policy. This coverage case involved the Environmental policy covering injury and damage caused by “pollution conditions.” Is escaped natural gas a pollution condition, akin to oil contaminating a water supply? Did the escape of natural gas or the explosion cause the damage and injury? The court had little trouble finding that the Environmental policy covered the claim. What about the GL? While not decided here, the court observed that the carrier had a strong position for no coverage and getting reimbursement from the Environmental insurer. Acuity v. Chartis Specialty, 2015 Wis. LEXIS 28.

In yet another Wisconsin ruling, an appellate court applied a total pollution exclusion to an insured even though a third-party contractor was responsible for the dispersal. The damage arose out of pollution, and the exclusion did not require that the insured release the contaminants. Advanced Waste Services v. United Milwaukee Scrap, 2015 Wisc. App. LEXIS 165.

In contrast a Michigan appellate court took a different view of injury caused by smoke inhalation after a fire. The court based its decision on causation; the injury did not result from the discharge of a pollutant but rather from negligence sparking the fire. Hobson v. Indian Harbor Ins., 2015 Mich. App. LEXIS 486 (unpublished opinion).

Pollution Exclusion—Vermont—Surplus Lines Difference

The Vermont Supreme Court applied a broad pollution exclusion in a surplus lines policy to deny coverage in an indoor pollution case. The claim was based on exposure to airborne chemicals from the insured’s installation of spray foam insulation. Vermont is one of a handful of states limiting the use of pollution exclusions in commercial insurance policies; the insurer must file a “consent to rate” application for specific approval. However, the insurer here issued a surplus lines policy, which was not subject to the Department of Insurance regulation. The exclusion was broad and clear, and there was no coverage for the claim. Cincinnati Specialty Underwriters Ins. v. Energy Wise Homes, 2015 Vt LEXIS 33.

Gen Re Note: The court was absolutely clear that the ruling is only relevant to surplus lines policies. Whether the exclusion would have been approved if filed was not discussed.

For more about this topic, see Gen Re’s article “Proprietary and Bureau Communication Exclusions—Is One Better?” (Policy Wording Matters, June 2014, page 10)
Asbestos Exclusion—Pennsylvania—Inapplicable to Larger Product

In Pennsylvania a lower federal court declined to apply an asbestos exclusion based on the finding that the language was ambiguous. The wording from a 1985 policy excluded injury and loss “arising out of asbestos.” The claims against the insured were based on refractory products containing asbestos components. Did the exclusion apply? The court found a difference between asbestos the mineral, and products incorporating asbestos, for purposes of interpreting the exclusion. Moreover, the court found industry support for the distinction. General Refractories Co. v. First State Ins. Co., 2015 U.S. Dist. LEXIS 25258.

Gen Re Note: We regularly review asbestos, lead and similar exclusions. Many current wordings exclude injury arising from asbestos and asbestos-containing products, among other things. Does your language overcome the court’s decision? We will discuss this topic in future Policy Wording Matters publications.

COURT WATCH—PENNSYLVANIA

The Pennsylvania Supreme Court is poised to reconsider long-established law on the employer liability exclusion in GL policies and how it applies to Additional Insureds. The AI in this case is a building owner; the insured is a restaurant with an injured employee. The question is whether the employer liability exclusion in the restaurant policy should also apply to the building owner as AI, and if the separation of insureds language affects the outcome. Watch for Mutual Benefit Co. v. Politopoulos, argued in October 2014.

NEW STATUTES

Construction Defects—Nevada—Limits Costs and Lawsuits

Newly enacted AB 125 tightens the existing right to cure law to address the sharp rise in construction defect claims in Nevada. The law makes several changes, including these: abolishes attorneys’ fee and cost provisions; requires pursuit of warranty remedies before lawsuits; narrows the definition of what constitutes a construction defect; and reduces the statute of repose. The new law took effect February 28, 2015. For a good overview of the statutory changes, go to Massive Overhaul of Nevada Construction Defect Statute at http://www.wshblaw.com/news/massive-overhaul-of-nevada-construction-defect-statute.

Punitive Damages—West Virginia—Damage Caps and Higher Standards

In a new law tightening standards for punitive damages, the West Virginia Legislature also added damage caps. Punitive damages may not exceed the greater of four times compensatory damages or $500,000. To get an award, the plaintiff must show that damages resulted from actual malice, or conscious, reckless or outrageous indifference to the health and safety of others. The new law, passed as SB 421, takes

Pollution Coverage Survey Update

Our online resource Pollution Coverage Rulings & Maps Law Survey has been updated with recent changes in the law. Clients can access the most current survey at genre.com with a login ID/password, or ask your Gen Re representative to email it to you.
COMMERCIAL LINES

Premises Liability—Nebraska—HOA and Homeowner Liability for Obvious Risks

Homeowners associations in Nebraska were dealt a blow when the state’s highest court allowed a personal action to continue when a visitor was injured after diving into a lake. The plaintiff, now paralyzed from the chest down, sued the HOA and the homeowners hosting the gathering as well as a neighbor. Nebraska has a Recreational Liability Act but the court held that the law did not protect the defendants because they did not own the lake. Even though the risk from diving into unknown waters is open and obvious, they could still be liable if they were aware of the danger and failed to warn. In particular, the HOA was in a position to have superior knowledge about the lake conditions and a duty to warn. Now a trial court will consider foreseeability, knowledge and other elements of the

Condo Associations and Managers—New Mexico—$12 Million Verdict in Slaying

A jury awarded nearly $12 million to a man shot in a condo complex with a history of criminal activity. The decedent lived next to a drug dealer and was shot accidentally. Both the condo association and the property management company were sued. The plaintiff alleged that the association and manager did not screen tenants, monitor reported incidents of crime, maintain the property or enforce its own regulations. Drug dealing was known to occur on the premises, but police were never called in. Half of the verdict was in punitive damages, with most assessed against the property manager. An appeal has been filed. Albuquerque Journal, March 19, 2015.

Tractor Trailer—Indiana—$13 Million for Fatal Crash

An oversized load resulted in an accident, killing three people and leading to a settlement for one in the amount of $12.8 million. The truck was hauling a wind turbine and while there was front escort vehicle, it was three-fourths of a mile ahead of the tractor instead of the 500 feet required by law. The plaintiffs alleged several violations of state law, such as the hauling of an oversized component in the dark and lack of adequate escort vehicles. Also, the trucking company had understated the size of the trailer, perhaps to avoid the curfew and cost of escorts, and the driver had no experience with such large hauls. Seven defendants were involved, including two trucking companies, a trucking broker and drivers of the truck and escort vehicle. Advisen FPN, February 20, 2015.

Intoxicated Employee—Texas—$17 Million Verdict for Accident

An employer that sent an intoxicated worker home was hit with a huge verdict for the fatal accident she caused. The employer nursing home had two previous incidents of the employee coming to work intoxicated; on the first occasion she was driven home by a co-worker and in neither case was she tested. In the third incident leading to the accident, she was sent home but not provided transportation. The $16.7 million verdict includes $5 million in punitive damages. The jury allocated 65% of the fault to the employer, and 35% to the employee. Advisen FPN, February 20, 2015.

Gen Re Note: The intoxicated employee scenario can happen to any type of employer. The employer had no role in the employee’s drinking; the negligence was in handling the employee and not providing alternative transportation. The allegations sound a lot like a dram shop case. Even though the employer did not furnish alcohol, the jury found liability as it might have for a bar continuing to serve or ejecting a visibly intoxicated patron. Do most companies have clear policies and procedures for dealing with employees under the influence? With the legalization of marijuana in a growing number of states, the area of employer responsibility could be tested more frequently.

NOTABLE VERDICTS AND SETTLEMENTS
tort claims. The only party dismissed from the lawsuit was the neighbor whose culvert allegedly created a dangerous condition in the lake. The court could find no duty to the plaintiff. *Hodson v. Taylor*, 2015 Neb. LEXIS 46.

**Agritainment and Workers’ Comp—Michigan—No GL Coverage**

We read about exposures from agritainment from the perspective of guest or patron injuries, but a recent case highlights the potential severity of injuries to workers. This hay wagon driver was hired by a farmers market to work over eight weekends. She suffered a severe injury and is now a paraplegic. Several lawsuits followed, and this one tested whether the worker was an employee under the GL policy. After finding that employees and temporary workers were specifically named in the employer liability exclusion, the court held that there was no GL coverage. The policy defined temporary worker to include seasonal employees, just like the one here. In conclusion, the court observed that this claim is exactly why Workers’ Comp insurance exists and, indeed, a comp claim is already pending. *Western World Ins. Co. v. Hoey*, 2014 U.S. App. LEXIS 23036.

**Gen Re Note:** Whether a worker is an employee or independent contractor is often at issue, and we have many discussions with clients on this topic. In Michigan the courts used an economic reality test. Our sense is that the courts, such as the one in Michigan, are more likely than not to find an employment relationship when disputes arise.

**States on WC and EL:** Sometimes the issue is not whether the worker is an employee (which would determine if WC/EL or GL coverage is triggered), but whether the WC or EL policy applies to the employee’s injury. Recently state supreme courts in *Florida* and *Ohio* rejected attempts to find employer liability, and directed claims back to the Workers’ Compensation system for recovery. However, we are watching Florida closely because a lower court had declared the workers’ comp. system unconstitutional based on its inadequate remedies. Pennsylvania has also rejected exclusivity when the WC law did not apply to late-manifesting asbestos claims. Now *Oklahoma* is on our radar screen because a district judge has allowed an injured tire worker to sue his employer for negligence because his injury was foreseeable. How many workplace accidents are foreseeable? *Insurance Business*, January 15, 2015.

For more on the Agritainment topic, see Gen Re’s article “Farms and Recreational Activities” (*Casualty Matters*, May 2013, page 10.)
The federal Graves amendment of 2005 was enacted to overcome nearly a dozen state laws imposing vicarious liability on vehicle lessors/owners for the negligence of lessees/drivers. The rental car industry succeeded in lobbying for the liability shifting amendment. The federal preemption of state law applies if (1) the owner or affiliate is in the business of renting or leasing vehicles, and (2) there is no negligence or criminal wrongdoing of the owner or affiliate. The decision to apply Graves will determine whether the commercial (lessor) or personal (lessee) lines insurer will be responsible for defense and liability.

Often plaintiffs are able to avoid Graves by showing that the lessor was negligent under the second exception, often for improper maintenance or defective warnings. Recently two cases tested another part of that Graves exception: affiliate negligence. Does the lessor lose immunity if the affiliated lessee company is negligent? For commercial insurers of groups with leasing and trucking operations, the answer can matter.

New York and Oklahoma Cases—In the New York litigation, the tractor trailer was leased by Millis Transfer from its affiliate company Great River, both of whom were wholly owned by Midwest Holding. Millis employee Wallace was viewing porn while driving his vehicle when he hit and killed the other driver. The estate sued all four parties. The court considered the organizational structure of the companies, and concluded that the lessor and lessee satisfied the statutory definition of affiliate. The two companies were owned and controlled by Midwest Holding, which met the control test in the law. The court then turned to the Graves language. The lessee/driver was negligent, and being an affiliate of the lessor, the second exception in the Graves statute applied. Therefore, Graves did not preempt the state vicarious liability law and the lessor could be directly liable. The court noted that most lease agreements are at arm’s length, but that was not the case here. Stratton v. Wallace, 2014 U.S. D.C. LEXIS 1386 (NY) and Fisher v. Progressive National, 2015 U.S.DIST. LEXIS 105816 (Okla).

In the Oklahoma case, the court declined to dismiss the case as requested by the leasing company, finding that further hearings were needed to determine whether the truck owner and leasing company were affiliates. Appeals of both decisions are pending.

Implications for Insurers—The lesson in these cases is that if there is common ownership between the leasing company and the operating company of a trucking firm, the leasing company may be subjected to vicarious liability for its affiliate’s negligence. In order for Graves to apply, both the lessor and affiliate lessee must be free from negligence.

Insurers issuing coverage for trucking company affiliates should understand the corporate structure of their insureds’ organizations if they wish to avoid potential additional exposure in states where vicarious liability causes of action are permitted. The list of states includes California, Connecticut, Florida, Idaho, Iowa, Maine, Michigan, Minnesota, Nevada, New York and Rhode Island. If you would like to know more about Graves and what it means to your business, Gen Re can help.

Underwriter Insight: Not all companies are structured as highlighted in Stratton, though some are established this way to take advantage of the protections. If your insureds lease autos to affiliates, the protection from the Graves amendment is at risk. That has another implication if you are writing the owner and the trucking company: potentially stacking limits available to the lessor for vicarious liability and the motor carrier for negligent driving. That’s another reason to know the corporate structure of insureds when writing auto and any type of insurance.
Trending—Commercial and Personal Lines

> Ridesharing—The legislative and regulatory activity on ridesharing is greater than on any insurance issue in recent times. Gen Re’s Auto Team presented in April on the latest developments and insurance implications. Let us know if you would like a copy of their materials.

> Drones—The FAA has proposed rules for use of drones, and ISO has filed wordings for commercial lines. They may review personal lines next. See our upcoming Policy Wording Matters for more on this topic.

> UM/UIM and Damages Trigger—Oregon is the latest state to revise its UM/UIM trigger from a limits-to-limits comparison to a limits-to-damages comparison. Effective January 1, 2016, more UM/UIM coverage will be available to insureds. This is the direction in which states are moving.

> Cyber Liability—A New Jersey court was the latest of three to dismiss a lawsuit for cyber liability in the absence of a showing of actual damage or injury. The law is still evolving and appeals are likely, but the general direction is favorable.

For more about these topics and other emerging casualty issues, see the blog “Casualty Underwriting—What’s Down the Line” by Liz Kramer (genre.com/perspective, April 9, 2015), and the article “New Exposures Spur New Wordings” (Policy Wording Matters, December 2014).

Large and Small Farms—Missouri—Nuisance Limitations Upheld

This neighbor versus CAFO lawsuit involves allegations of offensive odors emanating from hog operations, which is typical of claims against Concentrated Animal Feeding Operations. The suit claims only nuisance and loss of use and enjoyment of property; diminution of property value and medical conditions were not involved. The farm owner and also the corporate hog owner were named defendants. Under a Missouri statute, the ability to bring nuisance claims against agricultural neighbors is very limited. A nuisance claim can be made only for the lost market value of property or for documented medical conditions. Claims based on annoyance, discomfort or other sickness cannot proceed on the basis of nuisance alone—a cause of action independent of nuisance must be shown.

To avoid these lawsuit limitations, the neighbors challenged the constitutionality of the statute on more than half a dozen grounds—and lost on them all. They then argued that negligence and conspiracy actions were available, but here the court disagreed because all of the claims were still dependent on the nuisance allegations. As a result, the statute’s exclusive remedies and limitations on lawsuits were upheld and the case was dismissed. Labrayere v. Bohr Farms, 2015 Mo. LEXIS 29.

Gen Re Note: The exclusive remedies of the Missouri “Private Nuisance” statute apply to “property primarily used for crop or animal production purposes.” There is no language limiting its scope to large hog lots. Without being able to prove an actual medical condition or reduction in the fair market value of property, Missouri residents cannot maintain nuisance claims. Had runoff from the hog lot damaged the neighbor’s crops, for example, those neighbors could seek damages for negligence. The law reflects the legislature’s desire to eliminate lawsuits like the ones here—bad smells alone are just not enough.

For more on this topic, see our 2014 publications: Casualty Matters, November 2014 and “Farms and Residential Housing—Not Always Good Neighbors” (Insurance Issues, March 2014).
Homeowners and Guns—Utah—Negligent Entrustment

Can a homeowner be liable for supplying a gun to an intoxicated guest? Yes, the Utah Supreme Court says, holding that the injury is just as foreseeable as loaning a car to an intoxicated person. The shooting occurred at a party with heavy drinking, where the deceased picked up a loaded handgun and shot herself. Unbeknownst to the host, the guest suffered from severe depression and was on a variety of medications. Testimony on how the guest got the gun was conflicting; however, he had shown her the gun collection which was in a safe. The court’s decision involved only one issue—whether the gun owner owed a duty of reasonable care—and not whether that duty was breached. The court held that a gun owner has a duty to exercise reasonable care in supplying guns to others, such as children or impaired guests, who they know or should know are likely to use the gun in a manner that creates a foreseeable risk of injury. The court also noted that, given Utah’s law on comparative negligence, the guest is unlikely to prevail as the gun owner’s fault must be greater than that of the inebriated shooter. *Herland v. Izatt*, 2015 Utah LEXIS 50.

*Gen Re Note:* Insurance questions were not part of the case, so we do not know if this claim is covered. Even if the host prevails, which the court thinks is likely, the creation of a duty means the case will go to trial and incur additional costs.

Personal Umbrella Policy—California—Sexual Assault

A college student sued 10 individuals for sexual assault at a baseball team party, and this coverage action involved the Homeowners and Personal Umbrella policy of one defendant. The allegations in the underlying suit included invasion of privacy, slander and false imprisonment, as well as numerous assault and negligence theories. The slander allegations were based on comments made days and months after the assault. The HO policy covered personal injury along with bodily injury, both subject to an occurrence requirement; it also excluded expected or intended injury as well as sexual molestation. The court held that each allegation involved some degree of intentional and/or sexual conduct, so there was no HO coverage. The PU policy, in contrast, covered personal injury offenses and did not apply an occurrence requirement; the exclusions were similar. The California appellate court held that the PU policy covered some of the claim (e.g., slander) because there was no occurrence and hence no accident requirement as in the underlying HO. In addition, the insurer failed to meet the burden of proof for the exclusions to apply. As a result, the PU and not the HO policy has the duty to defend the insured. *Gonzalez v. Fire Ins. Exchange*, 2015 Cal. App. LEXIS 202.

**RECENT VERDICTS: DEFAMATION, BLOGGING AND MORE**

**California—$50,000**

A junior football league umpire with Asperger’s syndrome won a defamation suit against an anti-autism blogger. The blogger had used his Internet posts to claim that the umpire was a pedophile and sexual deviant, even calling for violence against him. The judge added $6,900 in interest to the $50,000 damage award. *The Ballarat Courier*, January 28, 2015.

**Massachusetts—$2.9 Million**

During an ongoing dispute over land development, the defendant used mail, email and robocalls to accuse a town official of state and local ethics violations. After a five-week trial, a jury awarded $2.9 million in damages that, with interest, totaled $4.4 million. Since his company was also sued, it is not clear if both personal and commercial lines policies could be involved. *The Lowell Sun*, March 19, 2015.

**Arizona—$12 Million Award Sent Back**

We close with an appellate decision to strike down a large defamation award against a woman blogging against a medical practice. Several reasons supported the rehearing, but one was that the size of the verdict shocked the court. If we hear about a new outcome, we will report it. *The National Trial Lawyers*, Feb. 5, 2015 at http://www.thenationaltriallawyers.org/2015/02/online-defamation.
The California sexual assault case, Gonzalez, puts a spotlight on nonconcurrency between Homeowners and Personal Umbrella policies. The HO form covered “bodily injury, property damage or personal injury resulting from an occurrence...” The PU policy, which listed the HO policy as underlying insurance, covered “with regard to personal injury, offenses committed...” In contrast, the ISO HO policy does not cover “personal injury” in the base form. The most commonly used HO coverage endorsements use offense language.

This nonconcurrency on personal injury—occurrence in the HO and offense in the PU—resulted in the PU policy covering the defamation claim on a first-dollar basis (excess of any available self insured retention). How often do these forms vary? Aside from some well-known areas, such as worldwide umbrella coverage where the endorsed umbrella is intended to provide first-dollar coverage, the differences are not as common as you might think. Yet, it does happen. A company could have a mismatch of Bureau editions, may schedule another carrier’s proprietary form as underlying or use one form to fit over a wide variety of their own available HO policies. Even within the same group of insurers, as we had here, nonconcurrences can crop up.

It is usually after a loss that the nonconcurrency is found and fixed. To avoid an unexpected loss, it comes down to checking forms and policy language. In this case, the HO did cover “personal injury” and the underwriter might have thought the language was concurrent with the PU. Unfortunately, the policy wording was different in a material way.

As personal injury exposures grow, the cost of a nonconcurrency grows along with it. Some best practices that we see PU insurers following include:

- Review of the underlying forms to identify areas of nonconcurrency
- Understand the umbrella dropdown potential
- Consider the options—live with it, price for it, or use a different form
- Consider available tools, such as endorsements, to limit the dropdown cost

So far we have focused on the insurers, but no doubt insureds and agents are also sometimes surprised by coverage differences between HO and PU forms. For example, an insured might expect HO and PU coverage for a claim to work just as it would if their child were liable in an auto accident. Nonconcurrences can have a cost other than the payment of an unexpected claim, that being an insurer’s reputation or an agent’s E&O.

In the end each company makes its own decision on what to cover (or not), be it from a high-level coverage perspective or how to respond on specific risk nonconcurrences. The more informed a company is about the differences and potential benefits and costs, the better those decisions will be. Is it time to take a look at your forms?

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Homeowners and Dogs—Nebraska—No Coverage for Injured Dog Sitter
Canine exclusions often arise in a dog bite claim, but in this case the important policy language was the “insured v. insured” exclusion. The plaintiff was dog sitting the insured's Chow when she was bitten. Since the plaintiff was legally responsible for the dog's care, she was an “insured” under the policy. As a result, the intra-insured exclusion applied. Coverage for a person “legally responsible” for designated property extends to those who have a duty to use or operate the property in the HO context. The high court noted that had a third party been injured, the HO policy would likely have provided coverage. Kleek v. Farmers Ins. Exchange, 2014 Neb. LEXIS 195.

Not-So-Silly Goose—Mississippi—Bite Claim Had Teeth
We read many dog bite claims, but a goose bite case is a first. The homeowner kept domesticated geese on her property and had constructed a low wall of water buckets to keep the geese off her porch. A visitor wanted to see a plant in the yard and left the porch, only to be frightened back by an aggressive goose. The homeowner gave her a bamboo pole to ward them off and accompanied her off the porch, but a goose still nipped her. In an attempt to escape the animals, the plaintiff fell over a water bucket and broke her arm. She sued for $200,000. The trial and appellate courts rejected the claim, but alas, the state supreme court reversed on one point. It allowed the plaintiff to pursue a claim on the basis of the “dangerous propensity” rule in the state. The high court acknowledged that it had never addressed a bird injury under the “dangerous propensity” rule and that few courts had in other jurisdictions. Still, there was evidence that the homeowner knew the geese could be aggressive, and that an actual physical attack by a particular goose was not necessary to apply the rule. The case will now proceed to trial (unless settled first) on whether the homeowner was on notice of the dangerous propensity of her geese, and whether the injury was reasonably foreseeable. Olier v. Bailey, 2015 Miss. LEXIS 164.

Gen Re Note: A dissenting judge commented that the plaintiff had retreated after a goose onslaught but soldiered forth again, so her knowledge of the danger was equal to that of the homeowner. That does not sound silly to us.
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Our upcoming *Policy Wording Matters* publication will feature:

- Drones—The risks, new ISO wordings, and an in-depth Q&A with William Mauro, ISO Director of Commercial Casualty Product Development
- Claims Made and Reported Policies
- ISO Personal Umbrella Form Changes
- Ridesharing Update

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