

**SIGNIFICANT ACCOMPLISHMENTS IN
CIVIL LITIGATION FOR THE YEAR
2009**

- **Georgia Pacific LLC v. Sentry Select Insurance**

Appellate Court of Illinois 5th Judicial District, No. 5-09-0351

Appeal from Circuit Court of Madison County, Illinois, No. 05-MR-56

Successful prosecution of complaint for declaratory judgment by dispositive motion without discovery. Trial court entry of finding of the duty to defend in favor of Georgia-Pacific and against Sentry Insurance. Settled following insurer's appeal. Georgia-Pacific was named as an additional insured pursuant to commercial carriage agreement with a trucking company vendor. Plaintiff material handler was injured by falling cargo while opening truck door. Claimant pleaded identical allegations against named insured trucker and additional insured shipper, Georgia-Pacific. The Insurer defended its named insured and attempted to assert loading/unloading exclusion as to Georgia-Pacific under commercial auto policy. The trial court in Madison County, Illinois found in favor of Georgia-Pacific on the duty to defend. Sentry took interlocutory appeal. Case settled prior to Georgia-Pacific filing response brief.

- **West Bend Mutual Insurance Company v. Lange Sign Group, Inc.**

Circuit Court of Rock Island County, Illinois, No. 08 MR 319

Following denial of summary judgment and on the eve of trial, insured stipulated to entry of a finding in favor of West Bend of no coverage under the insureds WC-EL policy.

Declaratory premised upon insured's breach of the duty to cooperate where insured waited until April 30, 2008 to report a September 20, 2005 injury; and between date of injury and report of injury, investigated, denied and partially paid benefits (medical and lost time).

The case was somewhat challenging since West Bend's motion for summary judgment had previously been denied with the court concluding that material issues of fact existed as to the timing and recording of notice. In discovery depositions, insured and its broker contradicted prior discussions with senior claims representatives of the insurer. Potential exposure for defense and indemnity exceeded six figures.

- **Kunkel v. Napolitano Trucking, Boise Cascade, LLC, et al.**

Circuit Court of Cook County, Illinois, No. 06 L 011229

Summary judgment entered in favor of Boise and its trucking division just two (2) weeks prior to jury selection. Demand at entry of summary judgment was \$1,000,000.00.

Boise Trucking Division of Boise Cascade LLC entered into a contract carriage agreement with Napolitano Trucking to ferry rolls of paper between Boise and a paper

converting facility (Midwest). Napolitano's driver, plaintiff Kunkel, en route to Boise from Midwest flipped the truck on the I-290/I-294 interchange sustaining serious injuries.

Plaintiff alleged Boise had instructed the shipper, Midwest, to place load of paper down center of truck for unloading convenience and that same was dangerous creating a load which was foreseeable to shift causing the truck to rollover. Plaintiff also attempted to allege FMCSR duties on Boise since Boise held operating authority even though it was not the trucker as to this load. Boise argued no duty or breach of duty focusing on the obligations of plaintiff and Napolitano under the Federal Motor Carrier Safety Regulations.

The motion was supported with the testimony of FMCSR expert Whitney G. Morgan for Boise. Of significance was that plaintiff's expert William Hebron (who admitted to me on cross examination) that the FMCSR's did not apply to Boise or Midwest as to this transaction and only applied to plaintiff and Napolitano).

Following the disposition, my partner, Dan Egan, who practices workers compensation, also obtained a dismissal with prejudice of a claim against Boise for Workers Compensation benefits under a statutory employer theory following the insolvency of plaintiff's employer.

- **K4 Enterprises, Inc. and MS Produce, Inc. v. Grater, Inc. and James T. Zavacki**
Appellate Court of Illinois 1st Judicial District, No. 07-2972;
Appeal from Circuit Court of Cook County, Illinois, No. 04 L 3746

Successful defense of an appeal with a challenge to a settlement reached during the course of a jury trial. The court affirmed K4 and MS Produce's 2.8 million dollar judgment.

Settlement was reached by the parties without the presence of counsel in the chambers of the trial judge. Following the settlement, Grater and Zavacki attempted to allege settlement negotiations as opposed to settlement and suggest the trial judge as a witness.

Our appellate response brief focused upon the defendants' failure to meet their appellate burden to furnish the court with a sufficient procedural record reflecting the alleged objection to the oral settlement.

Appellate strategy was challenging and rewarding since trial counsels zealously disagreed with our decision to defend solely on the absence of a record sufficient for appeal.

- **Schurwanz v. SCA Tissue North America, LLC and Georgia-Pacific LLC**
Circuit Court of Cook County, Illinois, No. 08 L 006180

Successfully prosecuted a motion to quash and dismiss in an Illinois lawsuit against a Georgia client where the client was not served in accordance with the Illinois Supreme Court Rules and Illinois Code of Civil Procedure. Plaintiff misidentified the real party in interest where he addressed the summons to an incorrect but existing entity. Plaintiff had alleged in the

underlying personal injury action our client's retained interest in securities, ownership, possession, operation, management, maintenance and control of a former facility.

- **Sinyard, et al. v. NFI Interactive Logistics, Georgia-Pacific, LLC, et al.**
Circuit Court of Macoupin County, Illinois, No. 07 L 8

Successfully obtained defense and indemnity in a wrongful death action for a client named as an additional insured by a logistics vendor responsible for moving trucks and trailers at a client facility. Decedent truck driver was pinned between the dock and a truck driven by the logistic provider's spotter adjacent to the bay at which he was making a delivery at the client's facility.

- **Diane Manna, individually and as Special Admin. of the Est. of Gary Manna, dec'd v. ASF-Keystone, et al.**
Circuit Court of Cook County, Illinois, No. 05 L 003064

My partner, Bill Harrington, obtained summary judgment for Arrow Road Construction Company in a wrongful death action by the estate of a motorcyclist who was killed after losing control after travelling over a change of elevation (planed to old surface) in the roadway in a construction zone. Plaintiff had alleged that Arrow negligently planed asphalt contrary to regulations creating an improper transition surface. Evidence presented in our motion established client's conformity with plans and surface transition regulations.

- **James Comparetto, Jr., et al. v. Lamp, et al.**
Circuit Court of Cook County, Illinois, No. 05 L 012570

Bill Harrington successfully resolved this catastrophic tort within client's coverage for employer, a roofing contractor, where plaintiff fell off a roof resulting in a burst fracture at T7-T8. Plaintiff was paralyzed from the chest down. The plaintiff was 32 years old at the time of the accident and a union roofer. Complex construction case where insured contractually waived its Kotecki cap and involved multiple insurance coverage issues disputing available insurance for the insured.

The case settled on the first day of trial within the policy limits with all potentially available insurers contributing to settlement. A global settlement of plaintiff's workers' compensation case was achieved closing out permanent total disability payments for the remainder of plaintiff's life and significantly reducing plaintiff's future medical exposure.

- **Pearl Woitas v. Woodfield Mall, LLC, et al.**
Circuit Court of Cook County, Illinois, No. 07 L 006621

Bill Harrington obtained summary judgment in favor of contractor alleged to have performed work in the parking lot where the plaintiff fell resulting in a tear of the posterior horn of the medial meniscus in her left knee and a fractured left patella.

- **Michael R. Hoffman v. Arrow Road Construction Co.**
Circuit Court of Cook County, Illinois, No. 07 L 008175

Bill Harrington resolved another construction zone accident case for \$25,000 to an injured bicyclist who had undergone a spinal fusion with over \$100,000.00 in medical expenses.

- **Bedford and Nixon v. Grant Importing, et al**
Circuit Court of Cook County, Illinois, No. 07 L 000326

Associate Julie Kamps settled a rear-end motor vehicle case for a mere \$15,000.00; a fraction of the anticipated costs of defense; and substantially less than the outstanding \$55,000.00 in medical! Plaintiff sustained partial synovectomy, left lateral meniscectomy and reconstruction of the left anterior cruciate ligament. Verdict value of the case was in excess of \$500,000.00.

During the course of a thorough investigation and discovery, Kamps uncovered a subsequent intervening injury. Favorable testimony was obtained from an impartial witness (ironically an attorney in Chicago who played on the plaintiff's semi-pro football team) that the plaintiff suffered the alleged injury while playing semi-pro football a week after the motor vehicle accident (which was denied by plaintiff under oath in his discovery deposition).

- **O'Neill v. Ford Motor Company, et al**
USDC Northern Dist. of Illinois, Eastern Div., No. 05-CV-07316

Associate Julie Kamps presented a successful summary judgment for a client subcontractor at a construction site involving numerous projects simultaneously proceeding under the same roof of the Ford Chicago Assembly Plant for the same owner and general contractor.

In a 56-page opinion, the United States District Court held that sub-contractor Alberici Constructors Inc. owed no common law duty to Plaintiff, an employee of a sub-contractor to the same general contractor as Alberici Constructors Inc. Plaintiff pleaded two identical counts against five defendant subcontractors who were working in the same vicinity of the accident.

Premised upon a thorough investigation, Alberici was able to establish the absence of any duty as to the common law or Restatement sections 414 and 343. Plaintiff could not establish our presence in the area on his date of accident and failed to prove our ownership or control of the alleged debris materials which contributed to his accident involving a man lift. We also established a contractual amendment which removed the work area from the scope of our contract.

- **Fosco v. Dr. Jos. Giacchino, Jr. & Melrose Park Clinic**
Circuit Court of Cook County, Illinois, Case No. 08 L 002162

Associate Yvonne O'Connor was successful in obtaining the Rule 12(b) 6 dismissal with prejudice for failure to allege the necessary elements to satisfactorily state a viable cause of action under Section 1962(c) of RICO. In particular, we had relied upon the United States Supreme Court's recent decision in Boyle v. United States, (No. 07-1309, decided June 8, 2009) which held that "an association-in-fact enterprise under RICO must have a 'structure.'"

- **Kamal v. World Class Motor Cars, Inc. and Warranty Support Services, LLC**
Circuit Court of DuPage County, Illinois, Case No. 07 L 001083

Associate Yvonne O'Connor obtained an excellent settlement during the pendency of co-defendant's appeal. Plaintiff auto purchaser filed suit against three (3) defendants: 2 auto dealers and warranty company alleging breach of contract, fraud, consumer fraud and breach of warranty of merchantability under State (810 ILCS 5/2-314; 15 U.S.C. 2301(7) and federal Magnuson-Moss Warranty Act (15 U.S. 2308).

During an appeal by plaintiff of trial court sustaining motion to dismiss as to one defendant; our client and the warranty company settled under the Illinois contribution act for nuisance value with the trial court entering a good faith finding. Appellate Court reversed. Dismissed defendant was returned for trial! We are home free!