THIS ISSUE
Insurance Law

17  Appearance Matter: Coverage for Matching Under Replacement Cost Policies to Achieve Aesthetic Uniformity in Ohio

32  Determining the Available Insurance Coverage Limits: Number of Occurrences

38  How Late Is Too Late?: The Timing of Tender and Its Impact on Coverage
WHEN IS A BUSINESS RISK COVERED?

11 WHEN IS A BUSINESS RISK COVERED?
By Stacy RC Berliner
Cassandra Dohar

17 APPEARANCES MATTER: COVERAGE FOR MATCHING UNDER REPLACEMENT COST POLICIES TO ACHIEVE AESTHETIC UNIFORMITY IN OHIO
By Justin Rudin

23 INSURANCE FOR REAL ESTATE DEVELOPERS
By Rose Marie L. Fiore
Gillian E. Hall

26 IS THERE COVERAGE UNDER A CLAIMS-MADE POLICY FOR GOVERNMENT INVESTIGATIONS?: DETERMINING WHAT CONSTITUTES A “CLAIM”
By Gabrielle Kelly

32 DETERMINING THE AVAILABLE INSURANCE COVERAGE LIMITS: NUMBER OF OCCURRENCES
By Richard C.O. Rezie

38 HOW LATE IS TOO LATE?: THE TIMING OF TENDER AND ITS IMPACT ON COVERAGE
By K. James Sullivan
Alexander B. Reich

FEATURES

DEPARTMENTS

04 FROM THE CMBA PRESIDENT
A Rap on Justice
Richard D. Manoloff

09 FROM THE EXECUTIVE DIRECTOR
Hot Talks
Rebecca Ruppert McMahon

14 BAR FOUNDATION
ROCK ON! 5, 4, 3, 2, 1
... Rock the Foundation!
Drew T. Parobek

20 ETHICS PERSPECTIVE
Beyond the Breach: What to Consider and How to Prepare?
Jean M. McQuillan

28 YOUR CLE METRO BAR
Impact Report, Legal Directory, Seeking Nominations, Membership Promo and Benefits, and Upcoming Events

35 WRAP-UP
Celebration for New Lawyers

WWW.CLEMETROBAR.ORG

07 THE SCOOP

08 SECTION/COMMITTEE SPOTLIGHT

18 NEW MEMBERS

30 CLE

43 CMBA CALENDARS

44 CLASSIFIEDS

47 BRIEFCASE
A Rap on Justice

What is your definition of justice?”

This question, discussed and debated from time immemorial, was asked by an audience member at the December taping of Tavis Smiley’s “Courting Justice” PBS series here in Cleveland, which CMBA Executive Director Becky McMahon and I attended. The question was posed to the panelists, Ohio Supreme Court Chief Justice Maureen O’Connor, Judge Ronald B. Adrine (Cleveland Municipal Court), Judge Patrick Carroll (Lakewood Municipal Court), and Yvette McGee Brown (Former Justice of the Ohio Supreme Court), who gave insightful and thought-provoking responses. See http://www.pbs.org/wnet/tavissmiley/interviews/courting-justice-cleveland-pt-2/.

Because thoughts had been thus provoked, audience members with whom I spoke after the taping continued the conversation, defining justice in their own terms. Judges, lawyers, and non-lawyers alike offered unalike observations from their unique experiences and vantage points. What an exhilarating exchange of views, I thought, as I exited the doors of the Idea Center at Playhouse Square into Cleveland’s exhilarating winter air — although “exhilarating” was admittedly not the word on my (frozen) lips by the end of my walk back to Key Tower, fighting 90-mph winds and enduring negative-150-degree wind chills.

During my inaugural address, I mentioned that justice is in our DNA as an organization. One of the CMBA’s “Core Values” is to “protect access to justice and equal justice, and promote a fair, efficient and competent system of justice for all.” We carry out this Core Value every day, in myriad ways. At a programmatic level, the CMBA has led and partnered with others on “Justice For All” initiatives to help bring legal services to underserved populations. And as a pillar of our Strategic Plan, we are reinforcing and expanding “thought leadership” efforts by helping to convene stakeholders and coordinate activities on issues of law and justice.

As a legal community, justice is ultimately what we are all about. Each in our own ways — both big and small, traditional and novel, obvious and subtle — we are bolstering and building upon society’s cornerstone, advancing the cardinal civic virtue. As Alexander Hamilton said, “I think the first duty of society is justice.” Together, we define how we treat each other and how we let others be treated, which, in turn, defines us as a society, and as citizens. Conceptually, justice is the perfect treatment of others, an ever-elusive goal because it is sought by imperfect people in an imperfect world. But we are vigilant in pursuing it nonetheless; wings without thrust fall from the sky.

Defining justice is likewise ever-elusive. Justice is an intuition borne from the history of human experience, and is baked into our bones. Words can thus never adequately describe it. But the more we think about it, the more we talk about it, and the more inputs we gather from the wealth of that human experience, the more we spiral toward it.

So I thought I would wrap up this mini-discourse on justice with a rap on justice, to put a few thoughts out there on the street in a format that looks a little less like a snooze button than the first half of this article. I might even perform it on the CMBA’s website.

Justice©2017

I hear the music swellin’ as I’m floatin’ down the aisle
Excited and nervous all the while, and the trip feels like a mile
I smile behind my veil, but I can’t see past it well
To the future, to the trials and the stories life will tell

Then we unite, for better or for worse
We’ll alight upon a pile or a plight — a blessing or a curse

But for now, it’s just us — a body and soul about to start
A marriage of cosmic circumstance, till death do us part

Amp it up, break it down, make it right, make it count — no justice be denied
Amp it up, break it down, make it right, make it count — cuz yo here comes the bride

The Fates chose you to be the groom, but what if we assume
They decided to sing another tune, pick another womb
Boom! Would I be pursuin’ Happiness, or is the deck stacked?
Are the rules of the game the same for every Jane and Jack?

They’re not. It’s the luck of the draw, there oughta be a law
But wait, there is — a million and one in all
But it’s never enough — the goal is a ghost
At most, there’s blurry edges, but it disappears when approached

Can’t give up the ghost or, well, all hell breaks loose
Gotta be like LeBron down three to one — refuse to lose
Seven billion twenty-five thousand six hundred souls
All fighting for the right to light up the world

I can be Happy with no mansion and no yacht
I can live with my choices if I throw away my shot
Blam! But I can’t stand talkin’ to the hand of the Man
When by unjust command I am banned from the Promised Land

Amp it up, break it down, make it right, make it count — no justice be denied
Amp it up, break it down, make it right, make it count — cuz yo here comes the bride
Hon. William K. Thomas
PROFESSIONALISM AWARD

NOMINATIONS NEEDED!

The CMBA requests nominations for the Hon. William K. Thomas Professionalism Award to honor a lawyer or judge who has significantly contributed to the enhancement of professionalism in the Greater Cleveland legal community by exemplifying the goals of the Ohio Supreme Court’s A Lawyer’s Creed and A Lawyer’s Aspirational Ideals and by furthering the ideals expressed in the Mission of the CMBA. The award will be presented at the CMBA’s Annual Meeting in June.

SUBMIT NOMINATIONS BY FRIDAY, APRIL 14, 2017 TO:
Ethics and Professionalism Committee
Attn: Kimberly M. Baga, Chair
1375 East 9th Street, Floor 2
Cleveland, Ohio 44114
or e-mail to Heather Zirke at hzirke@clemetrobar.org

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Rick Manoloff is President of the CMBA, a public finance partner at Squire Patton Boggs (US) LLP and a fan of the Cavs, Hamilton and Eminem. He does not write raps for a living, or as a pastime, although he has stayed at a Holiday Inn Express numerous times. He can be reached at (216) 479-8331 or rick.manoloff@squirepb.com. All copyright interests in the poem/rap are reserved to Rick Manoloff, who plans to retire early on the royalties.

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2017 William J. O’Neill Great Lakes Regional Bankruptcy Institute
Adding Structure to Restructuring
Strategies for Surviving Uncertain Times
Thursday & Friday, May 4 & 5
CMBA Conference Center

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Yeaa life’s not fair, but we can be fair — let it be
It’s just us — livin’ in community
No one acts with impunity, no one has immunity
We act with mercy and humility — cuz that guy could be me

When opportunity knocks, can I open the door?
The penthouse or the basement — does it matter what floor?
Will my appeal be granted, or will cert be denied?
Better clear the aisle ... cuz yo here comes the bride.

***
What's your definition of justice?
March 2017

The 2nd Annual Human Trafficking Law Symposium
8:00 a.m. - 4:00 p.m.; 6.5-hours of CLE credit, pending approval

An American Sickness: How Healthcare became Big Business and How You Can Take it Back
Elisabeth Rosenthal, Editor-in-Chief, Kaiser Health News
4:30 - 5:30 p.m.; 1-hour of CLE credit, pending approval

Making Practical Progress on Human Rights: An Essential Element of Sustainable Business
Michael Posner, former Asst. Secretary of State for Human Rights
4:30 - 5:30 p.m.; 1-hour of CLE credit, pending approval

Framework Contracts (CWRU Law Downtown at the City Club)
Juliet P. Kostritsky, Everett D. & Eugenia S. McCurdy Professor of Contract Law
8:30 - 9:30 a.m.; 1-hour of CLE credit, pending approval

Improving IRS Charity Oversight: Responsible Congressional Delegation, Responsive IRS Rule-Making
Philip Hackney, Associate Professor of Law, LSU Law Center
4:30 - 5:30 p.m.; 1-hour of CLE credit, pending approval

8:00 - 6:00 p.m.; 8.5-hours of CLE credit, pending approval

The Lawyer Referral Service bridges the gap between the community and LRS attorneys.
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*Experience & Professional Liability Insurance requirements apply

Contact Kathleen Donovan Onders at (216) 696-3525 x5002 or konders@clemetrobar.org.

more information & registration available online
law.case.edu/lectures
Kelly Albin

Firm/Company: The Sherwin-Williams Company
Title: Corporate Counsel
CMBA Join Date: 2009
Undergrad: John Carroll University
Law School: Cleveland-Marshall College of Law

DESCRIBE AN IDEAL SUNDAY.
My ideal Sunday is a combination of doing something active, eating great food, and doing something completely mindless and relaxing. A perfect Sunday this past fall: running "the bridges" route (Lorain and Detroit) around downtown Cleveland and visiting an exhibition at the CMA, eating Indian takeout, and then watching Westworld while working on a puzzle of a place I recently traveled to with my fiancé.

WHAT NEIGHBORHOOD DO YOU LIVE?
Tremont. I love the sense of community and pride shared amongst my friends and neighbors, not to mention the ability to bike to the Towpath, walk to the West Side Market, relax and picnic at several parks, and dine at some of the best Cleveland restaurants.

WHAT'S ON YOUR BUCKET LIST?
Travel! Currently planning a family trip to Italy in the summer of 2018. Also would love to learn how to play piano and return to horseback riding.

WHAT WAS YOUR FIRST JOB?
I worked at United Parcel (UPS) loading semi trucks for 15 months while in college.

WHO HAS INFLUENCED YOU THE MOST?
My parents. They are both incredibly hardworking, caring, kind, and supportive. My mother ended her teaching career to start a babysitting business when we were two jobs. When my Dad was in Saudi Arabia during the Gulf War, she held the family together at home. Both of them have been instrumental in shaping who I am today.

Rosanne J. Aumiller

Firm/Company: Grant Thornton LLP
Title: Director-Valuation Services Group
CMBA Join Date: 2015
College: Cleveland State University

TELL US WHY YOU LOVE CLE.
Where do I start? Desirable cost of living, access to culture: museums, botanical garden, orchestra, etc.; great summer weather; the lake, the Metroparks, less traffic, fabulous restaurant choices...

TELL US ABOUT YOUR FIRST EVER JOB!
I worked at United Parcel (UPS) loading semi trucks for 15 months while in college.

WHAT'S YOUR FAVORITE BOOK?
How about two faves? — The Glass Castle by Jeannette Wells and All the Light We Cannot See by Anthony Doerr.

WHAT'S ON YOUR BUCKET LIST!
Travel! Currently planning a family trip to Italy in the summer of 2018. Also would love to learn how to play piano and return to horseback riding.

WHAT WOULD REALLY SURPRISE PEOPLE ABOUT YOU?
That I used to own and ride a motorcycle!

WHAT'S ON YOUR BUCKET LIST!
I would love to go to a cooking school in Tuscany, and then travel around Italy by train. It would be awesome to visit my great-grandparents' hometowns of Salerno and Vieste. I would also like to return to St. Petersburg, Russia, and spend a solid chunk of time at the Hermitage. The collection is massive and a day visit doesn't even scratch the surface. It's amazing how much was hidden away and survived the siege of WWII.

Samantha Pringle

Firm/Company: CMBA
Title: Director of CLE and Sections
Start Date: 2007
College: Baldwin-Wallace College
Grad School: Kent State University

WHAT WOULD YOU BE IF YOU WERE NOT IN YOUR CURRENT PROFESSION?
I would be a librarian. Before I came back to the bar world, I was a librarian at Rocky River Library. I like working with people, I love to read and I'm good at solving problems and tracking down information. I'm curious, some might say nosy, so it's a good fit. I'd need to brush up on the Dewey Decimal System!

WHAT WAS YOUR FIRST PET?
That I used to own and ride a motorcycle!

HOW DID YOU MEET YOUR SPOUSE?
Dave and I met on the now-defunct Matchmaker.com in 2000, before internet dating sites were popular. He asked me out three times before I said yes. We met outside the Disney Store at Tower City and then went to Mallorca for dinner. We've been married 13 years, and I still appreciate his persistence.

TELL US ABOUT YOUR FAMILY.
Dave and I live in Brecksville. My parents live in my hometown, Ravenna, and they are both retired; or, as we say, living the dream. My older sister lives in the eastern part of the state, so she could stay at home while my Dad worked two jobs. When my Dad was in Saudi Arabia during the Gulf War, she held the family together at home. Both have been instrumental in shaping who I am today.

WHAT'S YOUR FAVORITE BOOK?
Someone abandoned her on our street when I was in the 4th grade. I wanted to name her Furball, which, in hindsight, was unfortunate. My grandmother fed her salami and pepperoni, so she was not the most svelte dog. She was almost 16 when we made the decision to put her to sleep. I can't imagine having another dog.

WHAT'S ON YOUR BUCKET LIST?
I would love to go to a cooking school in Tuscany, and then travel around Italy by train. It would be awesome to visit my great-grandparents' hometowns of Salerno and Vieste. I would also like to return to St. Petersburg, Russia, and spend a solid chunk of time at the Hermitage. The collection is massive and a day visit doesn't even scratch the surface. It's amazing how much was hidden away and survived the siege of WWII.
What is your goal?
The goal is to ensure that every person who takes the Bar Exam has a record of conduct that justifies the trusts of clients, adversaries, courts and others, and otherwise demonstrates the requisite character, fitness and qualifications for admission to the practice of law.

What can members expect?
Committee members are expected to participate in at least four investigations per year. Most investigations involve only a file review and brief interview. Each interview must be conducted by at least two committee members who have reviewed the applicant’s confidential Bar Admissions file, which contains extensive information regarding the applicant’s educational and work history, criminal record, and credit history. The purpose of the interview is to provide the applicant the opportunity to address any questionable conduct in the applicant’s history. Occasionally, a second interview or additional investigation is required. If after interviewing an applicant, both committee members recommend against allowing the applicant to take the Ohio Bar exam, and the applicant appeals, those committee members will participate as witnesses, in the appeal process.

Committee members must have been attorney members of the CMBA for at least three years. The committee holds an annual training seminar for new and existing members. The seminar is offered at no cost and CLE credits can be earned.

Young Lawyers Section (YLS)

Chair
Alex Reich
Calfee, Halter & Griswold LLP
areich@calfee.com

Regular Meeting
First Thursday of every month at noon at the CMBA

What is your goal?
To provide our members with opportunities and resources to actively engage with our CMBA and legal communities from the first day they enter the practice

What can members expect?
Our programming ranges from CLE seminars tailored to our membership, social and networking events at venues around the city, lawyer athletic leagues, and pro bono activities that include legal work as well as non-legal community service. We strive to achieve a variety in our programming so that the YLS has something for everyone.

Upcoming Events
The YLS will be hosting an informal happy hour on Thursday, February 16th. Stay tuned to our Facebook page for details!

Recent Events
On December 10, 2016, executive council members volunteered at Rainbow Babies and Children’s Hospital for their annual toy drive. Council members interacted with families who dropped off gifts (many of whom are former Rainbow patients), helped take pictures, and organized the many, many toys! On January 18, 2017, the YLS hosted a private tour at the Cleveland Museum of Art, followed by a reception at Provenance. A great time was had by all!
Rebecca Ruppert McMahon

Hot Talks

As we go to print with this month’s Bar Journal, it is exactly two weeks post-inauguration. According to the official White House website, President Trump has issued seven executive orders and 13 presidential memoranda during this time period. These expressions of presidential power have hit hot-button subjects from the Affordable Care Act and pipeline projects to the hiring of thousands of new immigration officers and the temporary suspension of refugee admissions into the United States. Reaction from across our country — and indeed, across the globe — has been swift and loud. Meanwhile, at home and abroad, other important issues also swirl, which call out for thoughtful discussion and debate among those in the legal community.

The CMBA’s mission begins with five simple words: “To promote the rule of law.” To believe in the rule of law means that we believe all people and all institutions are subject to and accountable to the laws of our land. It also means that we believe all laws must be both fairly applied and fairly enforced.

We stand behind our mission with action.

The CMBA’s Lawyer Referral Service quickly and efficiently connects anyone in need of legal help with an experienced lawyer. From immigration issues to employment problems, criminal matters and more, we make more than 10,000 connections each year to more than 140 qualified attorneys. Anyone can get access to legal help by simply calling (216) 696-3532 or going online to CleMetroBar.org/LRS.

The CMBA also strives to fulfill our mission of promoting the rule of law by creating opportunities for the open, civil exchange of ideas and viewpoints across a vast array of subjects — both for our members and the community at large. Just last month, Rick Manoloff wrote “A Discourse on Discourse” in which he spoke about the critical importance of “approaching conversations about consequential concerns with civility” and how opening up our minds to opinions being expressed “doesn’t mean lying down on the field and letting those opinions score; but it does mean letting them on the field of play.”

During the coming weeks and months, as the Trump Administration continues to unveil its plans for action, as the legislative and judicial branches begin to weigh in with their responses, and as the temperature rises on other hot topics, Rick and I think it is imperative for the CMBA to create opportunities for civil conversations about these consequential concerns. Our plan is to host a series of interactive discussions that will feature a variety of speakers who can offer expertise on particular topics, as well as a broad spectrum of viewpoints. The discussions will be free (yes, I said FREE), informal lunchtime and after-work conversations that will give our members and the public alike a chance to learn more about newly announced policies and other issues of importance. (Ok, lunch and drinks will not be free. We’ll have boxed lunches available for purchase at the noon sessions, or you can bring your own. And for the after work sessions, we’ll have a cash bar ready to roll.)

So what will these talks look like? Picture this. To start our conversation on recent executive initiatives, for instance, we will have two or three lead speakers spend 15 or 20 minutes on introductory information such as:

• What’s the difference between an Executive Order and a Presidential Memorandum?
• What’s the legal impact of such presidential actions?
• What are the recent hot presidential, legislative and/or judicial actions?

• From the speakers’ perspectives, what specific impact will the actions have?
• Then comes the Q&A. Free form. Thirty to 40 minutes. Anything you want to ask. Our speakers will field questions and again provide their perspectives. Sometimes they’ll agree. Sometimes they won’t. Sometimes the audience will agree; sometimes it won’t. The point here is to take real time developments and talk about them in an environment that is conducive to genuine, respectful give-and-take.

No, we won’t be catering to the left ... or to the right. No, we won’t be offering the CMBA’s view on whether a policy announcement is good or bad. Yes, we will be giving people an opportunity to learn more about the legal news of the day in an environment that will enable us to discuss, debate and ultimately become better educated about the changes coming out of Washington D.C. and elsewhere — changes that will affect all of us.

Got thoughts and opinions about the recent actions ... and those to come? We are looking for people who might be interested in leading our discussions. Immigration is clearly the buzzword for early February. Who knows what March and beyond will bring. If you would like to guide one of our conversations, give me a call or shoot me an email. We would love to include you.

As Rick stated so succinctly last month, “Critical evaluation of ideas is not just a civic virtue — it’s a civic imperative.” Our doors are open to all who wish to engage in civil discourse. Bring your questions, your views, your criticisms — whatever you’ve got — and come meet us at the bar for Hot Talks.

Complete details and a schedule of upcoming Hot Talk dates are available at CleMetroBar.org/HotTalks.

Rebecca Ruppert McMahon is the Executive Director of the CMBA and the CMBF. She has been a CMBA member since 1995. She can be reached at (216) 696-3525 or rmcmahon@clemetrobar.org.
The Cleveland Metropolitan Bar Foundation (CMBF) is pleased to recognize the following individuals who have recently joined the Fellows program, or who have increased their Fellows pledge at a higher level.* Fellows’ contributions are dedicated to the CMBF Endowment. The Endowment provides a steady stream of income into perpetuity for the support of our transformative outreach programs that are opening doors and changing lives in our community.

**WHAT IS A FELLOW?**
Fellows are distinguished members of the Cleveland Metropolitan Bar Association (CMBA) who have made impactful contributions to the Cleveland Metropolitan Bar Foundation (CMBF). They are nominated by the Fellows Committee and approved by both the CMBF and CMBA Boards.

**WHAT ARE THE FELLOWS CRITERIA?**
Fellows are members of the CMBA who have contributed significantly to the advancement of justice in the Greater Cleveland community; who have demonstrated the highest standards of integrity and professionalism; and for lawyers, who have been admitted to practice for 10 years or more.

For a complete list of Fellows, visit the website at CleMetroBar.org/Fellows.
For further information about the Fellows Program, contact Mary Groth at mgroth@clemetrobar.org or (216) 539-5975.

*This list includes new Fellows who have joined in the 2016–17 year and is current as of the publication deadline.

**New Fellows**

- **Rajeev K. Adlakha**  
  Vorys, Sater, Seymour and Pease LLP
- **David A. Bell**
- **Cynthia A. Binns**  
  GrafTech International Holdings, Inc.
- **Katherine D. Brandt**  
  Thompson Hine LLP
- **Michele L. Connell**  
  Squire Patton Boggs (US) LLP
- **Rhonda Baker Debevec**  
  The Debevec Law Firm
- **Robert S. Faxon**  
  Jones Day
- **Jeffrey A. Fickes**  
  Vorys, Sater, Seymour and Pease LLP
- **Stuart I. Garson**  
  Garson Johnson LLC
- **Adam Hollingsworth**  
  U.S. Attorney’s Office
- **Katherine Barr Hollingsworth**  
  The Legal Aid Society of Cleveland
- **Thomas M. Horwitz**  
  Thomas M. Horwitz Co. LPA
- **Hon. Anita Laster Mays**  
  Eighth District Court of Appeals
- **Hon. Deborah J. Nicastro**  
  Garfield Hts. Municipal Court
- **Ann M. Porath**  
  The Legal Aid Society of Cleveland
- **Steven B. Potter**  
  Dinn, Hochman & Potter LLC
- **Ryan K. Rubin**  
  Lewis Brisbois Bisgaard & Smith LLP
- **Keith A. Savidge**  
  Seeley, Savidge, Ebert & Gourash Co. LPA
- **Paul J. Singerman**  
  Singerman, Mills, Desberg & Kauntz Co. LPA
- **Robert Byron Wallace**
- **Ronald F. Wayne**  
  Buckingham, Doolittle & Burroughs, LLC
- **Kelly M. Zacharias**  
  Low Office of Kelly Zacharias

**New Gold Level Fellow**

- **Eric R. Goodman**  
  BakerHostetler

**New Silver Level Fellows**

- **Thomas L. Feher**  
  Thompson Hine LLP
- **Michael C. Hennenberg**  
  Dinn, Hochman & Potter LLC
- **Drew T. Parobek**  
  Vorys, Sater, Seymour and Pease LLP
When Is a Business Risk Covered?

Determining whether business risk exclusions preclude coverage is a complicated, fact-intensive inquiry often misunderstood by both policyholders and insurers — making it one of the most contentious issues in insurance coverage litigation today. In order to protect their claim and ensure that insurers adhere to their contractual obligations, policyholders need to understand what types of losses these exclusions preclude, and more importantly, what they do not preclude. This article discusses the application of the most commonly utilized business risk exclusions and tips for policyholders to maximize their coverage.

The standard Commercial General Liability (CGL) policy contains numerous exclusions that eliminate coverage for certain losses. Among those exclusions are the business risk exclusions, which eliminate coverage for losses, according to insurers, that are simply the cost of doing business. Specifically, these business risk exclusions limit coverage when damage is solely to the policyholder’s work or product and it is in need of repair or replacement. The most commonly litigated business risk exclusions are the “Your Product” exclusion, the “Your Work” exclusion, the “Impaired Property” exclusion, and the “Sistership” exclusion.

“Your Product” Exclusion
The “your product” exclusion bars coverage for property damage to “your product arising out of it or any part of it.” This exclusion only removes coverage for damage to your product. It does not exclude coverage for damage to others’ property or products. While the standard CGL policy’s definition of “your product” is broad, most losses involve damage beyond that to the policyholder’s product. For example, assume that a policyholder is sued by a customer because its defective siding materials resulted in water intrusion into the customer’s home and damage to the customer’s furniture, walls and flooring. If the customer sought damages only related to the repair or replacement of the defective siding materials, the “your product” exclusion may preclude coverage. However, if the customer seeks costs to repair or replace the furniture, walls, and flooring, the “your product” exclusion does not apply to those losses.

A frequent coverage issue is whether the policyholder’s product was incorporated into another product. Some courts will view damage to the composite product as entirely excluded, while others find coverage to the extent the damage to the composite product exceeded the value of the policyholder’s product. In one Ohio case, a policyholder manufactured gaskets that were incorporated into televisions. Several televisions caught fire and damaged the owners’ homes. The t.v. manufacturer determined that the cause of the fires was defective gaskets. It repaired the television sets containing the policyholder’s gaskets, and incurred costs as a result of the repair and replacement of the televisions and damage to the customer’s home. The t.v. manufacturer brought suit against the gasket manufacturer/policyholder to recover the costs incurred. The policyholder sought coverage under its CGL policy. The CGL insurer refused to provide coverage citing, among other provisions, the “your product” exclusion. Specifically, the insurer contended that the repairs were made to the defective gaskets themselves, and therefore all of those damages were excluded.
costs were barred by the “your product” exclusion. The court disagreed and concluded that the disparity between the costs of actual damage to the homes and furnishings and the comparatively miniscule costs for gasket repair made it “both fair and efficient to classify the repaired/replaced product as the televisions,” rather than the policyholder’s defective gasket. As such, the “your product” exclusion did not apply.

“Your Work” Exclusion
There are two “your work” exclusions. The first type excludes coverage for on going “property damage” to “that particular part of any property that must be restored, repaired or replaced because ‘your work’ was incorrectly performed on it.” The second type may exclude coverage for the policyholder’s completed faulty work. However, much like the “your product” exclusion, the “your work” exclusion does not eliminate coverage for damage to third-party property that results from the policyholder’s faulty work.

The inquiry may not stop there. If the work was performed by a subcontractor on behalf of the policyholder, there is likely coverage. This is because the second “your work” exclusion contains an exception for work performed on the policyholder’s behalf by a subcontractor. The reasoning behind this exception is that a general contractor does not have the same oversight or control over the subcontractor’s work as it does its own.

This issue was recently decided by the New Jersey Supreme Court, which reversed prior precedent to find coverage. In this case, a condominium association filed suit against a developer. The developer served as the general contractor on the condominium project and hired subcontractors to perform all the work. The association alleged that subcontractors improperly installed the roof, flashing, gutters, and EIFS façade, and because of this faulty workmanship, allowed water infiltration that caused damage to interior structures, common areas, and unit owners’ property. The court held that the subcontractor exception to the “your work” exclusion applied and, thus, there was coverage for the owners’ damages.

“Impaired Property” Exclusion
The most confusing of the business risk exclusions is the impaired property exclusion. It removes coverage for “impaired property” that is not physically injured arising out of a defect in the policyholder’s product or work. This exclusion may also bar coverage for a delay or failure by the policyholder to perform in accordance with the terms of the contract. Simply put, the exclusion only applies when the third-party property can be restored to use by the repair or replacement of the policyholder’s

It is imperative that policyholders understand their policy terms and know when and how the business risk exclusions apply to their claim. No one should assume that simply because there is damage to the policyholder’s own product or work, there is no coverage.
product. If the third-party property was damaged or cannot be restored to use simply by repairing or replacing the policyholder’s product, this exclusion does not bar coverage.

There is an exception to this exclusion which is the “Sudden and Accidental Exception.” This exception applies to any loss of use caused by a sudden accident after the policyholder’s product is put to its intended use. Many courts have determined that the phrase includes a temporal aspect, meaning the injury must occur at once or at a faster than normal rate of physical deterioration.

Ohio courts have interpreted this exclusion narrowly. In one case, a policyholder sold a defective concrete mix component to a contractor that used it to build a retaining wall. The wall began to fail because it contained both defective concrete and correctly comprised concrete. This resulted in the entire wall, both the part that was correct and the part that was defective, being removed. The wall owner sued the contractor and the component manufacturer for costs to remove and replace the entire wall. The component manufacturer sought coverage under its CGL policy, and the insurer denied coverage citing the “impaired property” exclusion. The court held that because it was impossible to remove the policyholder’s defective concrete without disturbing the rest of the structure, the incorporation of the defective concrete into the wall constituted property damage and the “impaired property” exclusion did not apply.

“Sistership” Exclusion
The “sistership” (often called the recall) exclusion is the most misinterpreted provision in a CGL policy. Most policyholders and insurers believe that it precludes coverage for any recall. That is not true. The exclusion only bars coverage for costs associated with withdrawing products from the market that have not yet failed. This exclusion was born out of the airline industry where regulations require an entire fleet of airplanes to be grounded if one of those planes is found to have a defective component. Essentially, the entire fleet is removed from the market, even though only one of them may contain a defect. If, however, there is damage to the recalled products (which is often the case), then this exclusion does not apply and coverage is afforded.

We see the sistership exclusion litigated in many food recall claims. In one instance, the policyholder sold chopped almonds to General Mills. General Mills used the chopped almonds to make nut clusters that were incorporated into its cereal products. After the cereal was sent to retailers, it was discovered that the policyholder’s chopped almonds contained wood splinters. General Mills shut down production and recalled the cereal. The policyholder sought coverage under its CGL policy, and its insurer denied coverage under the sistership exclusion. The court held that the recalled cereal was damaged. Based on the irreversible incorporation of the nuts into the nut clusters, the court held that “the wood splinters in the diced roasted almonds caused property damage to the nut clusters and cereal products in which the almonds were incorporated.” As a result, the sistership exclusion did not apply.

It is imperative that policyholders understand their policy terms and know when and how the business risk exclusions apply to their claim. No one should assume that simply because there is damage to the policyholder’s own product or work, there is no coverage. Instead, policyholders should look at all the facts. If there are allegations of damage to non-policyholder work or products, there is coverage.

Policyholders that have questions about their coverage or feel like their insurers are misapplying these exclusions should be proactive and engage the insurers early. Policyholders should highlight the third-party property damage in their tender letters; if the third-party property damage is not clear from the complaint or demand, provide the insurer with the evidence; respond to all correspondence that wrongfully relies on these exclusions; continually update the insurers with evidence of third-party property damage; and engage insurance recovery experts when necessary. Because the business risk exclusions are so often misunderstood, a policyholder’s diligence often means the difference between coverage and a policyholder paying for the entire loss.
The final countdown to our signature fundraising event has begun. We’re just a few days away from Rock the Foundation 12 at the Music Box Supper Club on Saturday, February 11, 2017. It’s not too late to join in the fun!

As I put pen to paper for this article, it struck me that the word “rock” has many meanings which actually apply to our big event:

- Rocktail
- On the Rocks
- Rock ‘n’ Roll
- Rock Stars
- Rock It
- Rock Solid

Many of these meanings brought back memories of growing up in Northern Ohio, and all of them have some tie to Rock the Foundation. How could this be, you may ask? Read on — and Rock on!

**Rocktail**

For the second consecutive year, we’re running with the ever-popular, generally mystifying, and heretofore undefinable “Rocktail” theme. Are sport coats required for the gentlemen in the crowd? No, but they’re certainly not prohibited. What about cocktail dresses for the ladies? Very lovely, certainly appropriate, definitely not mandatory. How about a Gene Simmons look-a-like contest replete with the full Kiss treatment: make-up, costume, footwear and guitar? If my memory serves me correctly, that is exactly what Hugh McKay wore last year. So what is Rocktail attire? I’m still not entirely sure, but I think “comfortable casual elegance conducive to dancing” fits the bill.

**On the Rocks**

For our purposes, “on the rocks” has one meaning: served with ice. There is something for everyone at Rock the Foundation, including this year’s specialty drinks — the Love Potion #12 and the “Drewl” (Drew’s Moscow Mule) — and it’s all served with a sumptuous dinner spread. Come hungry, and stay thirsty my friends.

**Rock ‘n’ Roll**

Rock the Foundation has been blessed with many great bands over the years, and 2017 is no exception. Transportation Boulevard kicks off the VIP Reception, followed by one of Cleveland’s hottest bands, Nitebridge, at the main event. And the remarkable acoustic guitarist Nate Jones will provide additional tunes throughout the night. Without a doubt, we’ll all be dancing to many classic Rock ‘n’ Roll tunes, which leads me to my first semi-non sequitur: do you know how many songs have the word “Rock” in the title? How is this for a sampling:

- Rock Around the Clock – Bill Haley
- Rocket Man – Elton John
- Jingle Bell Rock – Bobby Helms
- Rock Me Amadeus – Falco
- Baby Likes to Rock It (Like a Boogie Woogie Choo Choo Train) – The Tractors
- I Am a Rock (I Am an Island) – Simon & Garfunkel
- Rock Steady – YGB
- I Dig Rock ‘n’ Roll Music – Mamas and Papas
- Jail House Rock – Elvis
- Rock this Town – Stray Cats
- Rock the Casbah – Clash
- It’s Still Rock ‘n’ Roll to Me – Billy Joel
- I Know It’s Only Rock ‘n’ Roll – But I Like It – Rolling Stones

- We Will Rock You – Queen
- I Love Rock ‘n’ Roll – Joan Jett
- Rock You Like a Hurricane – Scorpions
- Let There Be Rock – AC/DC
- Rockin’ in the Free World – Neil Young
- Rock Lobster – B52’s
- Rock ‘n’ Roll Fantasy – Bad Company
- Rock ‘n’ Roll Hoochie Koo – Rick Derringer
- Rocky Racoon – Beatles
- Rockin’ Down the Highway – Doobie Brothers
- Rock with You – Michael Jackson
- Keep on Rockin’ Me Baby – Steve Miller Band
- Old Time Rock ‘n’ Roll – Bob Seger
- Party Rock Anthem – LMFAO
- Loves Me Like a Rock – Paul Simon
- Like a Rock – Bob Seger

Of course, my two favorite “rock” songs have to be “Cleveland Rocks” by the Presidents of the United States (for obvious reasons) and “Crocodile Rock” by Sir Elton John, which leads me to my second semi-connected observation and a glimpse into my past. It’s Thursday, November 4, 1974. Six junior football players on the Lorain High varsity squad finish their final practice session before the game the following evening against archrival, Elyria. They hightail it to the parking lot outside of storied George Daniel Field and make a beeline to the now-departed Richfield Coliseum: Elton John is bringing his Caribou Tour to Northern Ohio. Look at this play list:

1. Funeral for a Friend/Love Lies Bleeding
2. Candle in the Wind
3. Grimsby
4. Rocket Man (I Think It’s Going to Be a Long, Long Time)
5. Take Me to the Pilot
6. Bennie and the Jets
7. Daniel
8. Grey Seal
9. Goodbye Yellow Brick Road
10. Burn Down the Mission
11. You’re So Static
12. Lucy in the Sky With Diamonds (The Beatles cover)
13. Don't Let the Sun Go Down on Me
14. Honky Cat
15. All the Girls Love Alice
16. Saturday Night's Alright for Fighting

Encore:
17. Crocodile Rock

It was truly one of the greatest nights of my young life. The music from "Crocodile Rock" was still ringing in my ears as we made our way back to the old Chrysler station wagon. We had no illusions about complying with our 10:00 p.m. pregame curfew; however, none of us contemplated that we might get stuck in the Coliseum parking lot for three hours, nor did we bother to check the weather forecast and the reported blizzard alert. We certainly believed we would arrive at home well before our actual arrival time of 4:00 a.m., and we counted on each other to get to school before our coaches caught on to our shenanigans — yet another miscalculation on our part. I'm not sure I remember who won the game (I do recall that we were all benched at the beginning), but I will never forget that concert. To this day, it remains the first and the best. And Rock the Foundation revived the memory!

Rock the Foundation has engendered other fond high school memories involving the Cleveland music scene. As part of this gig as Foundation President, I get to be on the radio. I have been rightly told that I have the perfect face for radio, and it has been a lot of fun. The legendary Bill Wills of WTAM has been a long-time promoter of Foundation events, and Grace Roberts of The Wave has given us some great air time this year. I also had the privilege of spending a morning with Ed "Flash" Ferenc of 1490 WERE, and the high school memories surged. Who in Cleveland during the 1970s could ever forget the legendary cast of talented characters assembled at the Home of the Buzzard, WMMS? There were Jeff & Flash, Kid Leo and Matt the Cat to carry us through the weekdays. The weekend was kicked off promptly at 5:00 p.m. each Friday with Murray Saul (“Get Down, Dammit”) introducing Bruce Springsteen and “Born to Run.” Ah, the memories. Thank you, Rock the Foundation!

Rock Stars
No great Rock ‘n’ Roll event would be complete without its fair share of rock stars, and we have been blessed. A rock star is defined as:

Rock Star noun
Noun: rockstar
1. A famous and successful singer or performer of rock music.
   “a teen-idol rock star”

How about this roster of business and law firm Rock Stars:

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I think I have an even better original definition of Rock Star that applies to our esteemed individual honorees: a Rock Star is a paragon of his or her chosen profession whose accomplishments are so vast and reputation so well-established that they are universally recognized by their given first name. The Foundation will be awarding its second Richard W. Pogue Award for Excellence in Community Leadership and Engagement at the VIP Reception. The ceremony will shine the spotlight on our three Rock Stars: Dick (the legendary Dick Pogue), Chris (Chris Connor of Sherwin Williams, our inaugural Pogue Award Winner), and Beth (Beth Mooney, the Chairman and CEO of KeyCorp and this year’s esteemed honoree).

Rock It
Rock It means to have a great time; it also means to succeed mightily. I have no doubt that Rock 12 will exceed expectations on both counts. This event is a celebration of our profession and its incredible generosity in support of the CMBF’s essential mission of funding those programs. “Lawyers Giving Back” — check the long list of sponsors; “Lawyers Having Fun” — check out the dance floor on February 11!

Rock Solid
Our Bar Association and Bar Foundation are rock solid, anchored by energetic boards, tireless staff, big-hearted supporters inside and outside the legal profession, programs that are making a difference, a growing endowment, and a very special, fun event that opens hearts on Valentine’s Day Weekend at the Music Box Supper Club. Lift off is only days away — see you there!

Drew T. Parobek is a partner at Vorys, Sater, Seymour and Pease LLP. He is president of the Cleveland Metropolitan Bar Foundation and has been a CMBF member since 1993. Drew can be reached at (216) 479-6162 or dtparobek@vorys.com.
As a special benefit, CMBA members can reserve two conference rooms (Conference Rooms A and B) as well as the Members-Only Office for free. (Reservations accepted in the order in which they are received.) The Members-Only Office, which includes a desk, seating for guests and high-speed Wi-Fi, is the perfect place to meet with clients, work in a quiet professional atmosphere or relax between appointments. The next time you need an office away from your office, come ...

Meet us at The Bar!
visibly darker. Owners balked at completely residing the buildings. Instead it proposed taking the siding off of the apartment complex’s clubhouse and using it to replace the damaged siding on the two apartment buildings. Owners then offered to completely reside the small clubhouse with new non-matching siding. The case was tried to a jury who rejected Owners attempt to replace “old for old” and awarded damages to Eagleview for the estimated amount to completely reside the two apartment buildings that were damaged by hail.

The result obtained in *Eagleview* is consistent with the position taken by the editors of FC&S, a leading trade publication in the insurance industry:

By putting old siding to replace old siding, the insurer is effectively providing an “actual cash value” settlement, which allows depreciation. But that is not what the insured has been paying for. [R]eplacement cost policies have traditionally been sold to give “new for old”. *** [T]he insured had matching siding prior to the loss, and is entitled to new matching siding following the loss. Whether the replacement material provides a reasonable match is obviously subjective. Having the right proof can be critical.

For starters, the unavailability of the exact materials in the marketplace should be confirmed with the manufacturer. Even if the materials are available, a viable matching claim may still exist. In *American Storage Centers v. Safeco Insurance Co. of America* (N.D. Ohio 2009), 651 F. Supp. 2d 718, for instance, some vinyl siding on the insured’s 15 storage buildings was damaged by hail. Safeco did not think it was obligated to pay for siding that was not damaged because the existing siding’s color was unmatchable due to weathering. Judge Dowd found that to the extent a conflict existed between the OAC and the policy language — which excluded “wear and tear,”
the conflict must be resolved in favor of the Code’s “reasonably comparable appearance” standard. The fact that the siding may have also suffered from “wear and tear” did not, in the Court’s view, negate the necessity for replacement where replacement is necessary for a “reasonably comparable appearance.”

If the identical materials are unavailable, carriers will often rely on third party services like Itel to contend that other, substitute material of “like kind and quality” are available. Through Itel, carriers submit samples of carpeting, flooring, siding, and shingles and receive a report of proposed similar “matches” based on Itel’s comparison of the sample’s specifications to its database of products readily available in the marketplace.

Itel’s recommended materials often fail to provide a suitable match. To confirm this, samples should be ordered and then photographed to show the contrast with the existing materials. Perhaps unsurprisingly, a documented side-by-side comparison is often the most compelling evidence as to whether the replacement material is of “like kind and quality.” Compare Trout Brook, supra (“[T]he parties submitted pictures of the newly located shingles overlaid on [the] roof, and in the Court’s view a reasonable jury could conclude that the colors are not “similar” with Regatta Villagehomes Ass’n v. American Family Mut. Ins. Co. (Minn. Dis. Ct.), 2016 WL 5408042 (matching claim failed where insured failed to submit photos or physical evidence comparing replacement product with existing shingles and instead relied on, among others, affidavit stating that there was no reasonable color match).

Experts can also be useful in establishing a matching claim for several reasons. A properly qualified realtor may help establish the extent of the undamaged property in need of replacement to avoid diminishing the value of the property. See Erie Ins. Exchange v. Sams (Ind. Ct. App. 2014), 20 N.E.3d 182 (carrier obligated to pay cost of replacing the entire roof and siding based on the testimony of a realtor and insurance adjustor that mismatched roof slopes and exterior siding devalue a home); see also Holloway v. Liberty Mut. Fire Ins. Co. (La. App. 1 Cir. 1974), 290 So. 2d 791 (matching claim supported in part by qualified realtor that if carpeting of same texture and color not used in entire bedroom wing of house, value of house diminished by $1,000 to $2,000). Similarly, construction experts can be used to establish that materials are of inferior quality. See Trout Brook, supra (finding factual dispute as to whether replacement shingles of “like kind and quality” based in part on testimony that replacement shingles were brittle and cracked easily).

When a relatively small area of roofing, siding, or other property is physically damaged, replacing the undamaged property to achieve an acceptable aesthetic appearance can be extremely expensive. For Ohio home and building owners with replacement cost coverage, OAC 3901-1-54(I)(1)(b) and the right proof can be used to force insurers to pay the full value of claims.

Justin Rudin, of Rutter & Russin, LLC, devotes his entire practice to representing insurance policyholders with a focus on first-party property insurance and life insurance claims. He has experience representing clients both pre-suit and in litigation in a variety of coverage disputes including claims involving damage to personal and commercial property caused by fire, water, windstorm, hail and other perils. In 2017, Justin was named one of Super Lawyers Rising Stars. He has been a CMBA member since 2016. He can be reached at (216) 642-1425 or jrudin@ohiosurelawyer.com.
Beyond the Breach
What to Consider and How to Prepare?

Part 1 of this article examined the rule-based ethical duties of a lawyer using technology with the confidential information of a client. For most practicing lawyers, the bigger challenge today is how to fulfill those ethical duties?

There are actions to take to make a cyber attack less likely to succeed and to minimize damage, but there is presently no way to guarantee against an attack. If you practice in a larger organization with its own information technology department, resources are readily available to guide you. For the rest of the legal community, for those who do not have expert guidance readily at hand, knowing where to start is challenging.

One approach is to identify the basic questions lawyers should ask and be able to answer about the technology they use with client confidential information. This approach can inform your present situation and identify needs.

QUESTIONS?
First, make a list of all electronic devices and systems that your practice uses to collect, store, transmit or communicate about confidential client information. Think broadly of everything that may include client information, not just computers and networks but also websites, smartphones, cloud storage, wi-fi, email, texts, USB/thumb drives, cameras and more.

For each device and system that you list, ask: what protection is presently used on each device and system? Do you understand how these devices and systems are secured and how to keep them secure?

Communicating and transmitting client information: What are the means used on each of those devices to gather, transmit or store client information? Do emails, texts or other electronic messaging systems include client information? Are those means of communication encrypted or otherwise secure? Are strong passwords consistently required on all devices and systems that use client information? Are the listed devices and systems regularly checked for viruses, malware or other attacks? If any devices leave the office, how is the client information on them or transmitted by them protected outside of the office? Do you have a firm website through which client or prospective client communications occur? How is your website protected?

Storing and backing up client information: What file storage and file sharing systems are used by your practice? How are the storage or sharing systems you use for confidential client information protected? Lawyers keep multiple copies of important client documents but do you have regularly updated back up copies of all electronically stored client information? If hackers get into your practice and remove or encrypt everything, making it impossible to use, do you have a separate and secure recent backup to use to restore the information?

Second, make a list of every person who has contact with or access to the devices or systems that use client confidential information. Including yourself, what does every person know about protecting confidential client information with technology?

Have they received any training about information security and how to protect client information on all the devices they use? Does everyone know how to create a strong password and why consistent use of passwords is important on all devices and systems? If a device is lost or misplaced do they know how to protect the confidential information on the device? Do they know that the most common means of cyber attack is persuading a person to open an email attachment or click on a link on a website? Do they know how to recognize and what to do with questionable email attachments and web links? Do they know what phishing is? Phishes are diabolical fake emails — do they know that an email purporting to be from a state disciplinary authority about an investigation of an attorney that asks the recipient to click on an email link to enter a response is a fake? (See, Court News Ohio December 2, 2016, http://courtnewsohio.gov)

Have all persons who have access to and use of client confidential information been screened and background checked? Do they know that a disgruntled employee facilitated the largest breach, to date, of confidential client information from a Panama law firm in 2016? Do they know to question and report any inappropriate access to, or use of, client confidential information they may observe?

Third, consider your preparation for cyber attacks and response. Does every person know how to check for and recognize a cyber attack? Do you have a written plan or policy known to all who work in the office, about what to do when a cyber attack or breach is suspected or occurs? Is there a person in the office designated to be in charge or to coordinate a response when an attack is suspected or occurs? Have you considered how and when you would need to communicate with clients about a loss, disclosure or breach of client confidential information?

ANSWERS?
As the attorney ultimately responsible, you ought to have some idea how to answer these questions and know what is or is not being done to provide protection for client confidential information in your practice. If you have difficulty answering these questions, you have identified where to start and what you may need to learn and address.
There is no one size fits all answer since what is reasonable will vary depending upon nature and size of your practice. The needs of an office with individual clients and a single attorney will vary from the needs of a larger firm which represents health care institutions or large corporations. Professional Conduct Rule 1.6, Comment 18, lists the factors to consider: the sensitivity of the client information; the likelihood of disclosure if additional safeguards are not employed; the cost of additional safeguards; the difficulty of implementing the safeguards and whether safeguards adversely affect the lawyer’s ability to represent clients (e.g. by making a device or important piece of software excessively difficult to use).

A first step to get answers for your practice is to get a security audit from an information technology consultant. An audit should look comprehensively at how your practice manages confidential client information and identify areas for improvement. There are many consultants who offer this service including firms with experience assisting law practices. Get recommendations from colleagues who have used a consultant. There are many different cybersecurity apps and programs to protect information including low or no cost options.

WHERE TO GET GENERAL INFORMATION AND ADVICE ON CYBERSECURITY ISSUES?


Legal Ethics Opinions. An OSBA 2013 informal advisory opinion about cloud computing discusses cybersecurity standards. (See OSBA Inf Adv Op 2013-03) A State Bar of Wisconsin 2015 advisory opinion about cloud computing services includes a complete survey of state advisory opinions on legal technology and includes helpful appendices suggesting reasonable plans for cybersecurity. (See Wisconsin Formal Ethics Opinion EF-15-01)

Malpractice Liability Insurers. Because loss of confidential client information may be a source of malpractice claims, risk and loss prevention programs can include guidance about cybersecurity. Insurers now offer supplemental coverage for cybersecurity incidents which may be worth considering, depending upon your practice and your risk exposure.

Government Agencies. The National Institute of Standards and Technology publishes a “Framework for Improving Critical Infrastructure Cybersecurity” (2014), a five step program: identify, protect, detect, respond and recover; it is a widely accepted standard used by the Department of Defense and many others to address cyber security in an organization. http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf

The Department of Justice, Cybersecurity Unit provides accessible reports on current threats and best practices for response and reporting. (www.justice.gov/criminal-ccips/cybersecurity-unit)

The Small Business Administration provides cybersecurity resources for small businesses, that include online classes, toolkits, planners and self-assessment tools. (https://www.sba.gov/managing-business/cybersecurity)

The Department of Homeland Security Privacy Incident Handling Guidance, 2012, includes templates and suggested responses after a cyber attack that can be adapted to a legal setting. (https://www.dhs.gov/xlibrary/assets/privacy/privacy_guide_pihg.pdf)

Breach notification requirements from HIPAA regulations about disclosure of private health information, may apply to a law firm breach that includes medical information. (45 CFR 164.404)

THE FUTURE FOR LAWYERS

Effective January 2017, Florida became the first state to require three hours of technology training CLE for lawyers. Considering the challenges of rapidly evolving technology faced by all lawyers, this may be an idea whose time has come.

Jean McQuillan is an Assistant Professor of Law at Case Western Reserve University teaching legal ethics after 21 years of private practice in Cleveland. She served on and was Chair of the Board of Commissioners for Grievances and Discipline. She has been a CMBA member since 1980 and can be reached at jean.mcquillan@case.edu or (216) 368-1673. Any opinions expressed herein are solely her own.
Volunteering á la Carte

The Justice For All (JfA) programs of the CMBA offer volunteers a true variety of opportunities to give back to their community, with such an extensive range of commitment levels and experience requirements that everyone – attorneys, judges, law students, paralegals, and other legal professionals – can find something to match their interests and availability.

For more about volunteering, please visit CleMetroBar.org/ProBono or contact Jessica Paine, Assistant Director of Community Programs, at (216) 696-3525 or jpaine@clemetrobar.org.

THE 3RS – RIGHTS • RESPONSIBILITIES • REALITIES
Volunteers provide law-related education in the high school classroom.
Each volunteer serves on a team that visits an assigned classroom in a Cleveland or East Cleveland public high school to present six lessons on the U.S. Constitution and career counseling. Curriculum and volunteer orientation are provided.

Volunteer Schedule: Sept. 2016 – April 2017 (typically one classroom visit per month)
CleMetroBar.org/3Rs

3RS+
Volunteers provide college and career counseling, tutoring, and mentoring services to 11th and 12th graders in the Cleveland and East Cleveland schools, upon request.

Volunteer Schedule: During school year, Sept. 2016 – May 2017
CleMetroBar.org/3Rs

CLEVELAND HOMELESS LEGAL ASSISTANCE PROGRAM (CHLAP)
Volunteers can provide service in two ways: (1) providing brief advice and counsel at intake sessions at homeless shelters and social service providers, or (2) providing follow-up service on legal matters needing further attention.

Volunteer Schedule: Sessions scheduled regularly throughout the year
CleMetroBar.org/CHLAP

CLEVELAND MOCK TRIAL COMPETITION & MIDDLE SCHOOL MOCK TRIAL
Volunteer attorneys and law students serve as team legal advisors to Cleveland high school and middle school students for competition before a panel of volunteer judges in the spring.

Volunteer Schedule: Coaching Feb. – May 2017; Competition in May
CleMetroBar.org/ClevelandMockTrial

OHIO MOCK TRIAL COMPETITIONS
Volunteers serve as judicial panelists for teams of high school students from public, private, and home schools across the region. Volunteers can also serve as team legal advisors.

Volunteer Schedule: Cuyahoga District Competition January 20, 2017;
Cuyahoga Regional Competition February 10, 2017
CleMetroBar.org/OhioMockTrial

PRO SE DIVORCE CLINICS
Volunteers guide participants through the paperwork and process of securing a simple divorce pro se.

Volunteer Schedule: 3rd Friday monthly unless otherwise noted

REACH OUT: LEGAL ASSISTANCE FOR NONPROFITS
Reach Out seminars held quarterly feature free presentations on the law for both nonprofit leaders and volunteer attorneys, followed by brief advice sessions. Volunteers assist by presenting at clinics, participating in teams at brief advice sessions, and/or agreeing to take on further representation as needed.

CleMetroBar.org/ReachOut

SPEAKERS BUREAU
Volunteers address groups from throughout the community on a wide variety of legal topics.

Volunteer Schedule: As needed throughout the year

VOLUNTEER LAWYERS FOR THE ARTS (VLA)
Volunteers provide pro bono assistance and advice for legal issues faced by artists, and a series of free law-related education events held in Cleveland’s many unique arts venues.

Volunteer Schedule: Committee meets monthly, other services TBD throughout the year
CleMetroBar.org/VLA
Real estate development is a multi-faceted process consisting of a broad range of activities, including acquisition of land, financing, renovating or constructing homes and buildings and the lease or sale of residential, commercial and industrial property.

Sometimes property developers will undertake only part of the process. Some developers acquire property and get the plans and permits approved and then sell the property to a builder for a profit. Likewise, real estate development is different from construction and management, although many developers also build and manage their own projects.

A real estate developer often works with a variety of professionals, including city planners, engineers, surveyors, inspectors, contractors, lawyers, leasing agents and other industry professionals. As a result, real estate developers face unique risks and insurance needs.

A real estate developer should not assume that a commercial general liability (CGL) policy will cover all of its risks. Developers may want to consult their insurance broker regarding additional types of coverage. This article provides a brief overview of some commonly overlooked coverage and endorsements that a developer may want to consider.

**Professional Liability Insurance**

Professional liability insurance (PLI) insures against usual services and transactions conducted by real estate developers that typically are not covered under a CGL policy. Real estate developers staff professional employees including real estate agents/brokers, engineers, accountants, and attorneys. In doing so, it is important to include a PLI endorsement to limit liability relating to any errors or omissions committed by a professional on staff while conducting his or her professional services.

Typically, professional liability policies apply only to economic/financial loss and do not include bodily injury or property damage claims, which are typically covered by a CGL policy. In addition, PLI policies often limit the amount of coverage available for discrimination claims brought by potential buyers and tenants. As with any insurance policy, it is important to understand these policy limits.

**Environmental**

Another key coverage for developers to consider is environmental or “pollution liability” insurance. Many standard CGL policies contain a pollution exclusion. Environmental insurance addresses that coverage gap. An experienced environmental broker can obtain coverage enhancements tailored to the individual history, operational risk and liability concerns of a specific project.

**Employment Practices Liability (EPL)**

Employment Practices Liability (EPL) is a type of professional liability insurance. EPL insures against lawsuits filed by employees, former employees and potential job candidates for claims under Title VII of the Civil Rights Act of 1964, the ADA (Americans with Disabilities Act) of 1990, the Civil Rights Act of 1991, ADEA (Age Discrimination in Employment Act) of 1967, and Family and Medical Leave Act (FMLA). Depending on the policy, EPL may also apply to seasonal employees, leased employees and independent contractors. Although claims by customers and other third parties are typically not covered, there is a growing trend to increase the coverage of those types of claims.
Common exposures only covered under this type of policy include asbestos, mold, lead paint, underground storage tanks and other pollutants. Potentially hazardous operations include dry cleaners, gas stations, auto repair facilities, photography development centers or any business that uses or has used hazardous chemicals. It is common for a developer to renovate one area of a project while business goes on in other areas, increasing risk of third party exposure from spreading contaminants. This can be caused by demolition or removal of materials containing lead, asbestos and other hazardous substances, or by vapors and gases. Mold or legionella can form in HVAC and plumbing systems of a commercial or residential facility and even a single release of these pollutants can have far reaching consequences.

In addition to having your own pollution liability policy, verifying that contractors carry a pollution liability policy can help ensure that pollution conditions caused or increased by contractors’ activities are covered.

**Flood Insurance**

Flood insurance coverage can be helpful in limiting a real estate developer’s exposure to flood damage. Flood insurance covers loss for physical damage to buildings and the personal possessions within the building (up to a certain limit). Flood insurance typically does not include living expenses, economic loss for business interruption, or loss of use of the property during cleanup and reconstruction. Flood insurance coverage is typically limited for any areas below grade. If the real estate developer has property that is located in a flood-prone area it is important to have a contingency plan to protect against significant reconstruction delays and/or extensive underground construction. It is also important to note that mortgagors require a mortgagee to obtain Flood insurance if the property is located within a FEMA-designated flood area. Real estate developers should determine whether a property is located in a FEMA-designated flood area prior to purchasing the property.

**Blanket Limit**

A Blanket Insurance Policy (BIP) applies a single coverage amount to all of the properties or exposures that are insured under the BIP. Specifically, a BIP may cover varying types of property in the same location, the same type of property in varying locations, or varying properties in varying locations. Because of the wide range of applicability, a BIP usually contains significant coverage limits. Generally, those limits include a per occurrence limit that will apply to all of the properties insured, a per occurrence limit based on a percentage of the insurable value of the property, and limit based on a predetermined schedule of the insurable value of the property. The definition of occurrence can vary depending on the insurer, so real estate developers should be mindful of the definition used in a particular policy.

**Construction Policy**

There are different types of construction insurance, but any business that works in a construction trade should consider obtaining construction or “builder’s risk” insurance. Even when a developer hires a general contractor or builder who may carry their own construction policy, the developer, landowner (if different from the developer) and all subcontractors should be named as additional insureds.

Unlike CGL policies — which cover risks to third parties — a builder’s risk policy can cover damage to the developer’s own property. These policies typically insure against accidental loss or damages to a contractor’s work and property during construction and extend coverage to equipment, material and supplies. Builder’s risk policies are intended to provide a speedy resolution if a property claim occurs during a construction project, thereby avoiding construction delays.
Extended Period of Rental Income
This coverage is sometimes called “business interruption,” and it provides for the payment of lost rental income if the lost rent is due to some type of covered loss that causes an interruption to business operations. It is important to consider purchasing an “extended period” because, in certain situations, a tenant can terminate its lease if business is interrupted for an extended period of time. Under extended period coverage, the carrier will continue paying that tenant’s rent until a new lease is in place.

Conclusion
Real estate developers should carefully analyze their potential risks and ensure that they have proper insurance coverage, which often requires more than a basic CGL policy. Coverage should be reviewed regularly in case risks change. Practitioners representing real estate developers should always look into potential coverage for losses and liabilities because, under these specialized policies, coverage may be available for losses that would otherwise devastate a developer’s business operations. It is also a good practice to put your insurance carrier on notice of potential claims even if you are not sure whether the claim is covered.

Rose Marie L. Fiore is a member with the law firm of Kaufman, Drozdowski & Grendell, LLC and focuses her practice on real estate and financial services litigation. She represents real estate developers, mortgagees, finance companies and property management personnel. Ms. Fiore is an active member of the CMBA Real Estate Law Section and recently moderated a panel discussion at the CMBA’s Real Estate Law Institute on remedying the blight caused by foreclosures. She has been a CMBA member since 2007. She can be reached at (440) 462-6216 or rmf@kdglegal.com.

Gillian E. Hall is the General Counsel of Knez Homes and an active member of the CMBA’s Real Estate Law Section. She manages the efficient and profitable completion of residential real-estate transactions and development projects and is responsible for all legal matters of the organization. Ms. Hall regularly presents complex development projects to planning commissions, council, and other regulatory agencies. She has been a CMBA member since 2013. She can be reached at (440) 710-0711 or ghall@knez.net.
Is There Coverage under a Claims-Made Policy for Government Investigations?
Determining What Constitutes a “Claim”

BY GABRIELLE KELLY

As federal and state government agencies increasingly exercise their authority to conduct extensive investigations and bring enforcement actions, many companies are looking to their insurance policies to cover the costs. Typically, insurance coverage is triggered by a loss suffered by the policyholder or allegations that the policyholder is liable for damages. Yet, the question of coverage for fees and costs incurred in connection with governmental inquiries and administrative proceedings has become a frequently litigated issue. Depending on the nature of the investigation and the language of the claims-made policy, there may be a debate as to whether coverage exists under the relevant provisions stated in the policy.

Potential Loss Leading to a Claim
It can be extremely expensive for a company to investigate or respond to questions concerning its activities. Even if the company is not under any suspicion of wrongdoing, the company may incur the costs for any of the following:

• Conducting a thorough internal investigation, which may include hiring outside consultants
• Locating and gathering documents responsive to the investigation
• Retaining counsel to respond to formal or informal discussions and proceedings with governmental entities

In seeking coverage for these costs, policyholders are often met with resistance from their insurance carriers regarding whether the loss constitutes a claim. The likelihood that a policyholder will obtain coverage for its cost is dependent on the facts surrounding the claim, and the wording in the policy, which can vary widely in a claims-made policy. Some policies explicitly state it the insurer will pay those sums the insured becomes legally obligated to pay through suits, proceedings, and inquiries; whereas other policies state that the insurer will pay damages because of any Claim, but fail to define what constitutes a “claim.”

Courts’ Interpretation of “Claim”

Although it is better for both the policyholder and insurer when a policy clearly states what is covered, even in instances where “claim” is defined, there can still be many interpretations of policy language. Courts have been conflicted on whether an investigation constitutes a claim under a claims-made policy. Some courts have held that a written demand for non-monetary relief, such as a governmental subpoena, may constitute a claim that is covered under the policy. See, e.g., Minuteman Int’l v. Great Am. Ins. Co., No. 03-C-6067, 2004 U.S. Dist. LEXIS 4660 (N.D. Ill. Mar. 22, 2004).

An often-cited case in support of insurance coverage for administrative proceedings and informal inquiries is MBIA Inc. v. Federal Ins. Co., 652 F.3d 152 (2d Cir. 2011). In that case, the Second Circuit analyzed whether a claims-made policy covered the costs of responding to subpoenas issued by the Security and Exchange Commissions (SEC), and voluntarily cooperating with the New York Attorney General’s (NYAG) informal requests for documents. MBIA was one of several companies in which federal and state regulators ordered an inquiry as part of a larger investigation into the accounting practices in the securities industry. Pursuant to the investigation, the SEC issued several subpoenas to MBIA to produce documents concerning transactions involving non-traditional products. The NYAG issued similar subpoenas as the SEC. MBIA asked the regulators to accept its voluntary cooperation to avoid the negative publicity of government subpoenas. The regulators agreed and MBIA gathered and produced documents related to several of its transactions. MBIA then filed a claim with its insurer, who denied coverage on the basis that the subpoenas and voluntary actions were not sufficient to trigger coverage.

In holding that the policyholder was entitled to coverage, the court found that a subpoena is not “a mere discovery device” as alleged by the insurers, but is a “formal or informal investigative order” that is the main investigative tool available to the government. Id. at 159-60. Further, the court ruled that insurers “cannot require that as an investigation proceeds, a company must suffer extra public relations damage to avail itself of coverage a reasonable person would think was triggered by the initial investigation.” Id. at 161.

Conversely, other courts have held that “claim” does not include a mere request for information or an explanation for some adverse result. MGIC Indem. Corp. v. Home State Sav. Ass’n, 797 F.2d 285, 288 (6th Cir. 1986) (”[A]n assertion that a ‘wrongful act’ has occurred is not the same thing as a claim for payment on account of a wrongful act; a claim for payment is required to invoke coverage.”); Office Depot, Inc. v. Nat’l Union Fire Ins. Co., 734 F. Supp. 2d 1304 (S.D. Fla. 2010), aff’d, 453 F. App’x 871 (11th Cir. Oct. 13, 2011). In Office Depot, the court held that the insurer was not responsible for the costs incurred in
investigating and responding to SEC inquiries that Office Depot had violated securities laws.

In this action, Office Depot sought to recover the costs of cooperating with an SEC inquiry before it became a formal complaint. Office Depot received an internal letter alleging a problem with the company’s accounting practices and a letter from the SEC requesting documents to determine if securities laws had been violated. The company notified its insurer and self-reported its internal findings to the SEC. Office Depot then sought coverage for its legal fees for responding to the SEC inquiries, and its insurer denied coverage.

In denying coverage for the costs, the Eleventh Circuit held that the SEC’s requests for voluntary cooperation constituted an informal investigation of Office Depot, rather than a proceeding. The court concluded that the SEC's letters did not constitute a claim because they failed to “allege that violations have occurred or identify specific individuals that could be charged in future proceedings.” Id. at 876. The court did recognize, however, that the SEC notices that stated the SEC staff intended to recommend that the Commission bring a civil injunction was a “claim,” even though service of a complaint had not occurred.

More recently, in Employers’ Fire Ins. Co. v. ProMedica Health Systems, Inc., the Sixth Circuit held that a demand for documents is not a demand for relief at all, and thus did not amount to a “claim” under the insured’s policies. Employers’ Fire Ins. Co. v. ProMedica Health Systems, Inc., 524 Fed. Appx. 241 (6th Cir.2013). In ProMedica, the policyholder operated a hospital that acquired another hospital system. The Federal Trade Commission (FTC) notified ProMedica that it was conducting an investigation to determine whether the acquisition was a violation of antitrust laws. The FTC issued subpoenas and met with ProMedica representatives to discuss the deal closing. Once the FTC commenced an administrative action against ProMedica, the company notified its insurer of the claim. The insurer denied coverage on the basis that ProMedica had knowledge of a claim once it received a letter from the FTC.

In ruling that the policyholder provided timely notice, the court found that the elements of a “claim” were not met because the FTC did not “assert to be true” or “declare” that antitrust violations had occurred, and that the word “whether” simply discussed in hypothetical terms the possibility that an antitrust violation had or would occur. Id. at 248. The court ruled that this was not enough to be a claim since the FTC has broad investigatory powers and that “investigations” do not necessarily amount to “allegations.” Id. Accordingly, there was not a claim until the FTC commenced an action.

Conclusion

A company can be subject to an internal or government investigation for a multitude of reasons. It can be time-consuming and costly for a company to respond to these events. But as the cases have shown, there is potential coverage for the investigatory costs incurred depending on the policy language and nature of the investigation. As a result, policyholders must be familiar with how its policies define “claim” and notify its insurer of costs incurred from investigations by governmental entities.

Gabrielle Kelly is a partner in the insurance recovery group at Brouse McDowell LPA. She has been a CMBA member since 2008. She can be reached at (216) 830-6826 or gkelly@brouse.com.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

**BAR FOUNDATION RELEASES**

**2015–2016 IMPACT REPORT**

Our Cleveland Metropolitan Bar Foundation invites you to view its 2015-2016 Impact Report “Opening Doors, Changing Lives,” now online. The report shares how the support of donors, sponsors and volunteers helped the Bar Foundation and Association touch the lives of thousands of people in northeast Ohio through our “Lawyers Giving Back” programs last year. Our programs opened many doors for those seeking access to justice, information and resources about their rights and responsibilities, knowledge about the law and legal careers.

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**HALF-PRICE MEMBERSHIP CONTINUES**

Now is a great time to invite your friends or colleagues to join under because new and former members can join for a pro-rated 50% off membership and get all the benefits through June. Start the conversation and then simply invite them to a program or bring them to a networking function so they too can see the benefits you get from membership. Recruitment Bonus for current members: Ask the attorneys you recruit to list you as the referral on their application and earn a $25 credit on your account for each new member you recruit.

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Your membership saves you money, but are you leveraging it? In addition to benefits like the ethics hotline, job board and more, you also can easily save on business needs as well as personal expenses. Check out the full list of benefits and discounts online. To help you navigate through, the discounts are listed under the following categories:

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- Financial & Banking
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- Insurance
- Legal Research & Publications
- Marketing Support & Visual Communications
- Office Equipment & Supplies
- Office Support Services
- Printing & Promotions
- Retail
- Shipping

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UPCOMING EVENTS

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 24–25</td>
<td>Medical/Legal Summit</td>
</tr>
<tr>
<td>April 3</td>
<td>Annual Bench-Bar Memorial Program (new location: Carl B. Stokes U.S. Courthouse)</td>
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<tr>
<td>April 19–20</td>
<td>Northern Ohio Labor &amp; Employment Law Conference</td>
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<tr>
<td>April 28</td>
<td>Cleveland Mock Trial Competition</td>
</tr>
<tr>
<td>May 4–5</td>
<td>William J. O’Neill Great Lakes Regional Bankruptcy Institute</td>
</tr>
<tr>
<td>June 2</td>
<td>CMBA Annual Meeting at the Cleveland Public Auditorium</td>
</tr>
<tr>
<td>June 26</td>
<td>Golf Outing at Westwood Country Club</td>
</tr>
</tbody>
</table>

SEEKING NOMINATIONS

We are accepting your nominations for Officer and Trustee positions within the Association and Foundation, as well as for our annual Professionalism Award. Look for more details in this issue and online.

The Honorable William K. Thomas Professionalism Award (page 5)
CMBA and CMBF Board of Officers/Trustees (page 37)
Investigating a UPL complaint  
Russell A. Moorehead, Attorney at Law  
John A. Hallbauer, Buckley King LPA

Filing a Formal Complaint with the UPL Board  
Heather M. Zirke, CMBA Bar Counsel

Tips from the Board: A Conversation with the Chair of the UPL Board  
Leo Spellacy, Jr., Porter-Wright

The CMBA and the Women in Law Section present

International Women’s Day 2017: Women Navigating Their Way to New Perspectives, Opportunities and Heights  
Wednesday, March 8  
CREDITS 6.25 CLE hours

Wednesday, March 8

CREDITS 6.25 CLE hours

REGISTRATION & NETWORKING BREAKFAST 8:30 a.m.

WELCOME & INTRODUCTIONS 8:55 a.m.

The “It” Factor – What Is “It”? How Did They Get “It”?  
Andrea Kinast, Deputy Court Administrator, Cuyahoga County Court of Common Pleas  
Patricia Fitzgerald, Assistant U.S. Attorney, Northern District of Ohio  
Jennifer L. Stueber, General Counsel, Ohio Turnpike and Infrastructure Commission  
Rossilina (Rose) M. Fini, Chief Legal & Ethics Officer, Cleveland Metroparks  
Natalia Steele, Vorys, Sater, Seymour and Pease LLP  
Roni Sokol, The Sokol Law Firm LLC

Tips from the Business World that Apply to the Legal World:

Mission, Vision and Core Values  
Patrice Blakemore, Goldman Sachs, 10,000 Small Businesses Business Advisor at Cuyahoga Community College

On the Bench: Perspectives from Sitting Judges  
Hon. Patricia A. Gaughan, United States District Court  
Hon. Deanna O’Donnell, Parma Municipal Court

Taking a Leap: Lessons from Women Who Have Reinvented Themselves and Their Careers  
Lynn Ann Gries, Gries Consulting

Rebecca Braun, Braun Group  
Beth Potratz, DriveMyWay

Breakout Sessions

Navigating a Male World  
Michelle Sheehan, Reminger Co., LPA  
Carole Rendon, U.S. Attorney, Northern District of Ohio  
Fran Goins, Ulmer & Berne LLP  
Joyce Goldstein, Goldstein Gragel LLC  
Betsy Rader, Betsy Rader Law LLC, Moderator

Remote Control: Advocating for a Flexible Work Arrangement and Making It Work  
Julie A. Callesen, Tucker Ellis LLP  
Anthea Daniels, Baker Donelson  
Gabrielle T. Kelly, Brouse McDowell, Moderator

Practice Management Topic – Covering Your “Ass”ets  
Heather M. Zirke, Bar Counsel, Cleveland Metropolitan Bar Association  
Karen E. Rubin, Thompson Hine LLP, Immediate Past Chair, CMBA Certified Grievance Committee  
Kimberly Vanover Riley, Montgomery, Rennie & Jonson, LPA  
Amelia J. Leonard, Marshall Dennehey Warner Coleman & Goggin, Moderator

How Best to Make a Difference  
Alison J. Battaglia, PhD in Management Student, DM Fellow in Nonprofit Management and Public Service, Weatherhead School of Management, Case Western Reserve University

Wrap-Up and Adjourn to Reception – Presentation of the WIL Chair’s Inspiration Awards

The CMBA, Academy of Medicine Education Foundation, and The Academy of Medicine of Cleveland & Northern Ohio present  

Health Care Law Update and Medical/Legal Summit

This summit is designed to bring together doctors, lawyers, health care professionals and others who work in allied professions for education, lively discussion and opportunities to socialize and network.

Friday, March 24

CREDITS 5.0 CLE

HEALTH CARE LAW UPDATE 12 p.m.

KEYNOTE 4:15 p.m.

Health Care Law Update

Welcoming Remarks  
Victoria L’Vance, Tucker Ellis LLP, Chair, CMBA Health Care Law Section

Federal & State Law Update  
Speaker TBA
Quick Bites

February 14
ADR Section
The Use of Mediation Confidentiality to Shield Legal Malpractice

February 21
Estate Planning, Probate & Trust Law Section
Current Update on the Proposed 2704 Regulations

February 22
Litigation Section
Article III vs. Real Party In Interest: What Is What, and Where Are We At?

Meet us at the Bar for lunch, networking, and CLE. Check out these one-hour CLEs, sponsored by our Sections.

Managing Risk in Employing Foreign Nationals: At the Crossroads of Health Care, Labor & Employment, and Immigration
Isabelle Bibet-Kalinyak, McDonald Hopkins LLC, Panel Chair

Breakout Session Panels

(A) Safety Net Providers: Law and Public Policy
Anne F. Strassfeld, Ulmer & Berne LLP, Panel Chair

(B) Healthcare Cybersecurity and Privacy Litigation
Joseph A. Dickinson, Tucker Ellis LLP, Panel Co-Chair
William H. Berglund, Tucker Ellis LLP, Panel Co-Chair

Lessons Learned from the Dr. Persaud Health Care Fraud Case
Kim F. Bixenstine, Chief Compliance Officer, University Hospitals, Panel Chair

Adjourn to the Medical/Legal Summit
Keynote Address and Reception

Welcome & Introductions
Richard D. Manoloff, Esq., CMBA President
Robert E. Hobbs, MD, AMCNO President
Marlene Franklin, Esq., Associate General Counsel, MetroHealth Medical Center

Keynote Presentation: “The Future of the Affordable Care Act and Medicare Payment Reform”
Gail Wilensky, Ph.D., is an economist and senior fellow at Project HOPE, an international health foundation. She directed the Medicare and Medicaid programs from 1990 to 1992 and served in the White House as a senior health and welfare adviser to President George W. Bush. From 1997 to 2001, she chaired the Medicare Payment Advisory Commission, and previously chaired one of its predecessor commissions, the Physician Payment Review Commission. Dr. Wilensky is an elected member of the Institute of Medicine and has served two terms on its governing council. She received a bachelor’s degree in psychology and a PhD in economics at the University of Michigan.

Saturday, March 25
CREDITS 4.0 CLE
REGISTRATION & BREAKFAST 7 a.m.
WELCOME & INTRODUCTIONS 8 a.m.
MACRA – Plenary Session

OVERVIEW
The Patient Protection and Affordable Care Act of 2010 (ACA) created the National Quality Strategy (NQS) and included the redesign of Medicare’s fee-for-service (FFS) payment structure. As set out in the new Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) legislation signed into law in April 2015, physicians will now submit quality measures through the Merit-based Incentive Program System (MIPS). MACRA replaces the Medicare Sustainable Growth Rate (SGR) and puts into place two types of quality payment programs.

SPEAKERS
Cathy Costello, JD, Director, ClinSyncPLUS Consulting, Ohio Health Information Partnership
Howard Piatuk, MD, MPH, FACS, Health Services Advisory Group (HSAG) Vice President for Medical Affairs & Chief Medical Officer
Robert Furno MD, MPH, MBA, Chief Medical Officer at the Centers for Medicare & Medicaid Services

Addressing the Opioid Crisis in Ohio – Plenary Session

OVERVIEW
This session will discuss the impact of the opioid epidemic in Ohio, and the unprecedented strain on all of our resources. The panel will discuss the extent of the problem in terms of the current statistics and provide insight into the physiology of addiction. They will also discuss what is being done to combat the problem from both the medical and legal perspectives.

SPEAKERS
Nicole Labor, DO, Addiction Specialist, SUMMA Health Systems
Carole S. Rendon, Office of the United States Attorney General, Northern District of Ohio
Hugh Shannon, Administrator, Cuyahoga County Medical Examiner

Lawsuits: How to Survive, How to Avoid: A Medical Legal Perspective – Plenary Session

OVERVIEW
This panel seeks to address all aspects of the medical-legal process, by offering perspective from a practicing physician, who has been active in the medical-legal reform movement; a litigation consultant, who works with witnesses and defendants to prepare them for unique demands of the litigation process; and a trial judge, who has presided over nearly a hundred medical malpractice trials, and will share observations that she has made, and that jurors have shared, about the intricate courtroom drama of profound loss, medical care and professionalism.

SPEAKERS
John Bastulli, MD, St.Vincent Charity Medical Center; The Honorable Nancy R. McDonnell, Cuyahoga County Court of Common Pleas

* The AMCNO has obtained approval from University Hospitals (UH) for 5.5 hours of Clinical Risk Management Education (CRME) credit for those physicians participating in the UH Sponsored Physician Program.

EVENT CO-CHAIRS
Robert E. Hobbs, MD, AMCNO President
Marlene Franklin, Esq., Associate General Counsel, MetroHealth Medical Center

Register at CleMetroBar.org/CLE!
For questions or to register over the phone, call (216) 696-2404.

WWW.CLEMETROBAR.ORG  FEBRUARY 2017  CLEVELAND METROPOLITAN BAR JOURNAL  | 31
Determining the Available Insurance Coverage Limits: Number of Occurrences

BY RICHARD C.O. REZIE

Whether dealing with auto claims, mass torts, or product liability claims, one universal constant in determining the amount of insurance coverage available is determining the applicable number of occurrences. This is true for policyholders, insurers, and third-party claimants. The factors that generally control determining the most favorable position to assert as to the number of occurrences include: (1) whether the claim or suit arises from a single event or a series of events and, if a series, how the events are related; (2) the applicable deductible; (3) the applicable limits per occurrence or per accident; (4) the applicable general aggregate limit; (5) the existence of umbrella or excess coverage; and (6) the definition of occurrence, accident, or any other terms used to define limits, if the policy contains such definitions. Performing this analysis early is key to maximizing recovery or minimizing exposure. An analysis of these issues can focus discovery as well as indicate the most logical exposure. An analysis of these issues can focus discovery as well as indicate the most logical

Insurance policies often define applicable coverage limits in terms of an “occurrence” or an “accident,” with continuous or repeated exposure to the same general harmful conditions being defined as constituting a single “occurrence” or “accident.” Generally, insurance policies define an “occurrence” as an “accident”; often, the term “accident” is not itself further defined. Because the terms “occurrence” and “accident” are often defined to include one another and often discussed interchangeably by courts, we will use the term “occurrence” to generally encompass both terms for the purposes of this discussion. In any event, coverage limits are usually defined with lower “per occurrence” limits and separate, higher “general aggregate limits,” which cap the total coverage available in the event of multiple occurrences. However, some insurance policies have no general aggregate limits. In other words, the per occurrence limits apply if there is one occurrence. If there are two or more occurrences, the per occurrence limit applies to each occurrence. If, for instance there are three occurrences, three per occurrence limits apply. Coverage is exhausted when the total amount incurred for all three occurrences reaches the general aggregate limit. The general aggregate limit is the ultimate ceiling on the amount of coverage available.

Deductibles also come into play. The deductible usually applies separately to each occurrence. For instance, there may be no coverage available at all for a series of small claims, none of which individually exceed the deductible, if they are all deemed to be separate occurrences. By asserting that the series of claims is a single occurrence, however, the insured might avoid the deductible but also limit coverage to the single per occurrence limit. In some instances, it might be more advantageous for an insured to assert multiple occurrences even if some may not exceed the deductible where the larger claims, if aggregated as a single occurrence, might exceed the per occurrence limits. Each factual scenario should be carefully considered by not only taking into account the current claims but also any anticipated future claims or losses. Only by considering all the factors together can the most desirable position be determined. Two illustrative examples at what might be considered opposite ends of the spectrum follow.

In a multiple car accident, there will often be more than one impact while, at the same time, all the events flow in relatively quick temporal succession, with each impact arguably being one of the causes of the next impact. Under the generally used definition of “occurrence” and facts presented, there can often be legitimate grounds for disagreement as to the number of occurrences and, thus, the available limits. Courts will look to a variety of factors to determine the number of occurrences, including: the number of separate impacts; the length of time between impacts; whether one impact flowed from another or whether each had a separate cause; whether multiple drivers/vehicles were involved; whether the accident was a chain reaction; and whether there are multiple proximate causes, i.e., whether more than one tortfeasor is liable based on each tortfeasor’s independent conduct. See, e.g., Sarrough v. Budzar, 8th Dist. Cuyahoga No. 102422, 2015-Ohio-3674; Miller v. Motorists Mut. Ins. Co., 196 Ohio App.3d 753, 2011-Ohio-6099 (11th Dist.). While none of these factors is necessarily determinative alone, taken together, they will often point toward either single or multiple occurrences.

The facts presented will often be such that the parties will be able to advocate the positions which most benefit their interests. For instance, an auto liability policy generally has no deductible and general aggregate limits which are two or three times the per occurrence limits. Thus, both the injured third-party and the insured will often think it to their advantage to argue in favor of multiple occurrences so as to maximize available coverage both to compensate the injured third-party and to protect the insured from personal liability exposure. On the other hand, it will often be most advantageous for an insurer if there is only one occurrence, because the per occurrence coverage limits would limit the insurer’s potential exposure to a lower level.

The situation outlined above can, however, rapidly change depending on the deductibles, coverage limits, and number of claims involved. Where there are many claims or suits arising out of the same or similar conduct over the course of many years, there are often
potential arguments supporting both single and multiple occurrences. If the claims are small and the deductible appears to exceed them individually, it may be advantageous for the insured (or claimants) to advocate a single occurrence. In that way, the aggregated claims will exceed the deductible.

On the other hand, if the claims are large and, if aggregated, would quickly exceed the per occurrence limit, it may be advantageous to assert multiple occurrences. In that way, the insured can tap into multiple per occurrence limits and only be capped at the general aggregate limit, which is generally a multiple of the per occurrence limit. This changes, of course, when there are layers of umbrella and excess coverage available above the primary limits. In that case, a single occurrence theory may be most advantageous to a party seeking to maximize coverage by avoiding the application of multiple deductibles.

While the ultimate resolution of the issue will invariably turn on the specific facts and policy language, courts often examine the fact pattern at issue. Thus, courts will consider whether a single product or multiple products allegedly caused injury, whether claimed injuries occurred at multiple locations, whether the injuries alleged resulted from the same circumstances, and whether the decision to manufacture a certain product is considered the occurrence resulting in multiple injuries. For instance, it has been stated that the “manufacture or sale of an allegedly defective product constitutes a single occurrence, regardless of the number of injured individuals.” International Surplus Lines Ins. Co. v. Certain Underwriters & Underwriting Syndicates at Lloyd’s of London, 868 F.Supp. 917, 922 (S.D.Ohio 1994). On the other hand, in Babcock & Wilcox Co. v. Arkwright-Bos. Mfg. Mut. Ins. Co., 53 F.3d 762, 768 (6th Cir.1995), quoting Norfolk & W. By v. Accident & Cas. Ins. Co., 796 F.Supp. 929, 937 (W.D.Va.1992), the Sixth Circuit reasoned that “a wide variety of machines in a number of different locations created a variety of sounds over the course of a number of years. Railroad employees working near these machines suffered injury to their hearing as a result of exposure to these sounds. ... While the railroad’s negligence may indeed have been a cause of the injuries, calling that negligence the single occurrence out of which the claims arose is nonsensical.” See Cincinnati Ins. Co. v. ACE INA Holdings, Inc., 175 Ohio App.3d 266, 2007-Ohio-5576, ¶ 45-53 (1st Dist.). Further, if finding numerous small claims to be multiple occurrences would result in no claim ever exceeding the deductible, courts will often consider that as part of their analysis and potentially as a factor favorable to a single occurrence theory. See, e.g., Owens-Ill., Inc. v. Aetna Cas. & Sur. Co., 597 F.Supp. 1515, 1525 (D.D.C.1984).

Overall, on the policyholder/claimant side, the number of occurrences is an important practical consideration, often along with the per occurrence deductible and the aggregate limits, in obtaining the maximum insurance coverage available. The same is true for insurers in advocating against providing more coverage than was agreed to or intended based on the premiums charged. Both sides can benefit from an early analysis of these issues as well as focusing on the facts and policy language that will ultimately be determinative.

Rich Rezie is a partner active in Gallagher Sharp’s Insurance, Business, and Appellate Practice Groups. He focuses on complex civil litigation, class actions, and defense of insurers, including toxic tort and environmental coverage claims, bad faith, unfair claims practices, and breach of contract. He has been a CMBA member since 2012. He can be reached at (216) 522-1097 or rrezie@gallaghersharp.com.
In Honor and Remembrance of the Lawyers and Judges of Cleveland and Cuyahoga County who passed away between January 1 – December 31, 2016

Monday, April 3rd at Noon
in Courtroom 19A of the Carl B. Stokes U.S. Courthouse

A memorial program will be held for the following members of the bench and bar who passed away over the past year. Family, friends, colleagues and all lawyers in the Cleveland and Cuyahoga County area are invited to share in this final tribute to honor these men and women.

Marion B. Amato
James S. Carnes
Joseph Robert Compoli, Jr.
Joseph John Corso
Fred Charles Crosby
Theodore John Dalheim
Steven Scott Davis
Saul Eisen
Jeffrey D. Fincun
Debra Lynne Folkman
Harold E. Friedman
Burt J. Fulton
Warren P. “Pete” Geiger
Rudolph “Rudy” Joseph Geraci
John H. “Jack” Gherlein
Wendy J. Gibson
George Galvinos, Jr.
Sanford Aaron Halpert
Edward Donald Hayman
James Mahoney Hill
Gary Bruce Kabat
John Timothy (JT) Kalnay
Jon Charles Kleri
Lori Ellen Laisure
Robert L. Larson
Irvin Alan Leonard
Paul F. Levin
Giles Timothy Marshall
James William Mckee
Andrew J. McLandrich
Michael George Meissner
Irvin Myron Milner
James Plummer Mrarmor
Donald Richard Murphy
John D. Naughton
Charles Joseph O’Toole
Francis Xavier Reddy, Jr.
Dennis Michael Reid
Clyde Kirk Rhein
Edmund W. Rothschild
Paul Theodore Ruxin
George J. Sadd
Isaac Schulz
Kevin J.M. Senich
William John Sexton
Robert A. Toepfer
Sol Tushman
Francis Anthony Varckette
Senator George V. Voinovich
Robert Frederick Voth
Hon. Edward Stanley Wade Jr.
Mary Viola Walsh
Michael Lawrence Wolpert
Leonard Wilbert Yelsky

For more information, please contact Krista Munger at (216) 696-3525 ext. 2224 or kmunger@clemetrobar.org.

The CMBA has made every effort to compile a complete list of the attorneys and judges in Cuyahoga County who have passed away over the past year. If you are aware of a name that has been omitted from this list, please contact Krista Munger.
On the closing night of another successful New Lawyer Boot Camp, we hosted our annual Celebration for New Lawyers reception to congratulate and celebrate all those who successfully passed the July Bar Exam. We were pleased to join with so many attorneys, judges and others from our great community to be the “welcoming committee” for this new class of attorneys.

**THANK YOU TO OUR SPONSORS**

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Cleveland-Marshall College of Law  
Special Counsel  
Cleveland Play House  
Great Lakes Theater
ARE YOU READY
TO ANSWER
THE CALL TO
LEAD?
By regulation, the Cleveland Metropolitan Bar Association (CMBA) annually invites any and all Members of the Association to submit their recommendations or self-nominations for future volunteer leadership positions. For the upcoming 2017–2018 Fiscal Year beginning July 1, 2017, the CMBA is accepting nominations for the following positions:

**Vice President**
Serving one year as vice president before advancing for one year to president-elect, and then serving one year as president

**Vice President of Membership**
A two-year term

**Vice President of Diversity & Inclusion**
A two-year term

**Trustee**
Six (6) Member lawyers to each serve one, three-year term as a member of the Board of Trustees

The primary consideration by which all candidates for an open position will be evaluated is a demonstrated history of service to the CMBA through engagement with and/or leadership of the CMBA’s Sections, Committees and/or CLE programs.

**IDEAL CMBA OFFICERS & TRUSTEES WILL**
- be committed to the CMBA’s mission and goals
- work collaboratively with others
- offer adaptability, creativity, innovation and vision
- have a passion for the legal profession
- be open to considering different/new points of view
- be accountable
- have earned the respect of peers
- be energetic, responsive and follow-through
- have time to devote to the CMBA and a willingness to make the CMBA a priority commitment
- represent diverse life experiences and backgrounds, practice areas, segments of the legal community

If a prospective nominee has questions, contact Rebecca McMahon, Executive Director, or another current officer/trustee to learn more about serving.

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As the charitable, fundraising arm of the CMBA, the Cleveland Metropolitan Bar Foundation (CMBF) also annually invites any and all Members of the Association to submit their recommendations or self-nominations for future volunteer leadership positions. For the upcoming 2017–2018 Fiscal Year beginning July 1, 2017, the CMBF is accepting nominations for the following positions:

**President-Elect**
Serving one year as president-elect before advancing to a one-year term as president

**Vice President of Endowment**
A one-year term

**Vice President of Special Events**
A one-year term

**Lawyer Trustee**
Serving a two-year term, with opportunity to serve a maximum of three consecutive two-year terms (6 years total)

**Community Trustee**
Non-lawyers of the community; serving a two-year term, with opportunity to serve a maximum of three consecutive two-year terms (6 years total)

**IDEAL CMBF OFFICERS & TRUSTEES WILL**
- be engaged in the mission of the CMBF and the programs of the CMBA, and have a passion for the work of our Bar
- have an ability to raise money
- work collaboratively with others
- provide connections throughout Cleveland
- have capacity to serve
- provide investment expertise and/or grant making experience
- represent diverse life experiences, backgrounds, practice areas, segments of the legal and business communities

---

All nominations are due by 5 p.m. on Wednesday, March 1, and should be sent to:
CMBA or CMBF Nominating Committee

c/o Executive Director, Rebecca Ruppert McMahon

If by Mail to: 1375 E. 9th Street, Floor 2, Cleveland, Ohio 44144

or By Email to: rmcmahon@clemetrobar.org

Visit CleMetroBar.org/Nominations for details.
How Late Is Too Late?
The Timing of Tender and Its Impact on Coverage

BY K. JAMES SULLIVAN & ALEXANDER B. REICH

As all insurance coverage practitioners know, there are two principal varieties of insurance policies: 1) claims-made policies; and 2) occurrence based policies. A claims-made policy provides coverage on a claim that is made against the insured during the policy period. These policies are referred to as claims-made-and-reported policies where the policy language specifies that a claim must both be made against the insured and reported to the insurer during the policy period (or within a specified period of time thereafter) to trigger coverage. An occurrence policy, on the other hand, premises coverage on the occurrence of a loss, regardless of when the claim based on that event is made against the insured.

While both varieties of policies invariably require the insured to notify the insurer of a claim in a timely fashion, notice of a claim that is ostensibly given to an insurance company later than specified in an insurance policy may have different consequences depending on the type of policy in place. The effect of such “late” notice is explored in this article, with respect to both indemnity coverage and coverage for pre-tender defense costs.

1. May an Insurance Company Avoid Coverage Due to What It Deems “Late” Notice?

In the context of occurrence policies, which often contain language requiring an insured to provide “prompt,” “immediate,” or “as soon as practicable” notice of a claim to the insurer, Ohio courts have adopted what is known as the “notice-prejudice rule” when an insurer disputes the timeliness of the notice of a claim. Pursuant to the notice-prejudice rule, when an insurer’s denial of coverage is premised on the insured’s unreasonable delay in providing notice — but only if the insurer is prejudiced. See Ferrando v. Auto-Owners Mut. Ins. Co., 98 Ohio St.3d 186, 2002-Ohio-7217, paragraph one of the syllabus. Specifically, upon a finding that — under the totality of the circumstances — there was an unreasonable delay in the insured’s notice of a claim, there is a presumption of prejudice to the insurer which the insured has the burden to rebut. Id. at ¶ 90. This rule is dependent largely upon the nature of occurrence policies, which provide coverage based on the underlying loss event giving rise to the claim, regardless of whether that claim is made or tendered during the policy period. Accordingly, the timing of notice of a claim is not necessarily a condition precedent to coverage but, rather, is arguably a covenant incidental to the terms that define the scope of coverage.

Claims-made policies are often treated differently. Unlike occurrence policies, claims-made policies typically contain more specific notice requirements. For example, a claims-made policy might read something akin to the following sample language:

“[A] prejudice inquiry is not appropriate in a claims-based policy where the parties’ agreement governs claims that are made during a specific period of time. Coverage is not triggered, and the insured is not deprived of any benefit, when the claim is not made or reported within a specific deadline.” See Quail Energy Corp. v. Greenwich Ins. Co., Franklin C.P. No. 14CV-08-8438, 2015 Ohio Misc. LEXIS 13447, at *36 (July 29, 2015). A judge in Ohio’s federal Southern District reached a similar conclusion in 2007:

“Prejudice inquiry is not appropriate in a claims-made policy where the parties’ agreement governs claims that are made during a specific period of time. Coverage is not triggered, and the insured is not deprived of any benefit, when the claim is not made or reported within a specific deadline.”

The Ohio Supreme Court’s decision in Ferrando is not controlling under these circumstances because the insurance policy in that case did not include a specific date by which the insured was to notify the insurer of any claim or occurrence. Wendys Int’l Inc. v. Ill. Union Ins. Co., S.D. Ohio No. 2:05-cv-803, 2007 U.S. Dist LEXIS 15699, at *23 (Mar. 6, 2007).

These holdings are not unanimous in cases decided under Ohio law, however. At least one federal court has applied what is effectively the notice-prejudice rule in the claims-made context, including the federal Southern District of Ohio in 2009 (notably, the same court producing the 2007 Wendys Int’l case discussed above). See Prof ‘ls Direct Ins. Co. v. Wiles, Boyle, Burkholder & Bringardner Co., LPA, S.D. Ohio No. 206-cv-240, 2009 U.S. Dist. LEXIS 109998 (Nov. 24, 2009). Notably, while the policy at issue in Professionals Direct was a claims-made policy, the court relied on what it considered to be ambiguous policy language and a renewal provision which provided that the insurer “will not amend the retroactive date(s) during a period of continuous coverage.” Id. at ¶ 12. The insured sought coverage for a claim made during one policy period but reported during the immediately subsequent policy period following a renewal with the same insurer. The court found that the insured provided timely notice because the policy
arguably contemplated continuous coverage in the event of a seamless policy renewal. Id. at *43-44. The court further determined that, even if it found the notice to be untimely, the insurer was not prejudiced and, therefore, could not deny coverage. See id. at *55 (citing Helberg v. Nat'l Union Fire Ins. Co., 102 Ohio App.3d 679, (6th Dist. 1995) (applying notice-prejudice rule to claims-made policy where exclusion language was interpreted to provide continuous coverage upon policy renewal).

2. May an Insurance Company Rely upon the Timing of Notice to Avoid Paying Pre-Tender Defense Costs?

Assuming a policyholder can sidestep an insurance company's attempt to deny coverage for a third-party claim against the policyholder based upon the timing of the policyholder's notice, the parties must still resolve the issue of whether the insurer is responsible for paying the policyholder's pre-tender defense costs. There is scant Ohio authority analyzing the issue. Insurers looking to deny coverage for such costs often point to language in their policies that arguably allows insurers to avoid reimbursing pre-tender defense costs, such as:

“[N]o insured will, except at its own cost, voluntarily make a payment, assume any obligation, or incur an expense, without the Company’s consent.”

However, there is authority (albeit dicta without significant analysis) to suggest that the issue of pre-tender defense costs may be subject to the notice-prejudice rule, especially where the recovery of such costs is not explicitly barred by the clear language of the policy. In Dover Lake Park v. Scottsdale Insurance Company, although Ohio's Ninth District Court of Appeals ultimately affirmed the trial court's refusal to instruct the jury on the notice-prejudice rule on the issue of pre-tender defense costs, in reaching its decision, the court found:

“[W]here [the insured] provided unreasonably late notice of [the] claim to its insurer ... , the prejudice inquiry set forth in Ferrando is not applicable to the determination of [the insurer]'s liability for failure to reimburse pre-tender litigation expenses incurred by [the insured] in defending against the claim.”

See Dover Lake Park v. Scottsdale Ins. Co., 9th Dist. No. 21324, 2003-Ohio-3312, at ¶ 15. This suggests that, had the insurer provided timely notice of the claim, it would be appropriate to apply the notice-prejudice rule to determine whether the insurer would be prejudiced by reimbursing pre-tender defense costs.

In addition to common sense arguments favoring the application of a prejudice standard to pre-tender defense costs, some policies have language that support it. For example, if a policy provides that the insured will not incur defense costs without the insurer's prior consent, but also that the insurer shall not unreasonably withhold such consent, the insured may be able to argue that the insurer would have had to consent to its pre-tender defense costs anyway had notice been given sooner and, therefore, the insurer would not be prejudiced by reimbursing such costs after the fact.

This analysis is consistent with other jurisdictions that apply the notice-prejudice rule to determine recoverability of pre-tender defense costs, particularly jurisdictions in which the duty to defend can pre-exist an insured's notice obligations. See, e.g., Sherwood Brands v. Hartford Accident & Indem. Co., 689 A.2d 1078 (Md. 1997) (applying Maryland law); Smith & Nephew, Inc. v. Fed. Ins. Co., W.D. Tenn. No. 02-2455B, 2005 U.S. Dist. LEXIS 49058 (Dec. 12, 2005) (applying Tennessee law). In jurisdictions that allow notice to be a condition precedent to an insurer's duty to defend, however, it may be difficult for an insured to invoke the notice-prejudice rule to recover pre-tender defense costs if the applicable policy expressly treats notice as the trigger for coverage.

These issues reveal that timing can, indeed, be everything in the world of insurance coverage.
Consequently, it is important for practitioners to make sure their clients understand what their insurance policies require before needing coverage. Even when a client calls after missing notice deadlines contained in their insurance policies, all is not necessarily lost. It is important to carefully review the relevant policy language, look for helpful language or ambiguities that can be exploited, and consider how Ohio’s common law can impact the analysis.

K. James Sullivan is an insurance policyholder lawyer at Calfee, Halter & Griswold LLP. He is an OSBA-certified Insurance Law Specialist, the Chair of Calfee’s policyholder coverage practice, and past Chair of the CMBA Insurance Law Section. He has been a CMBA member since 2004. He can be reached at (216) 622-8200 or kjsullivan@calfee.com.

Alexander B. Reich is an insurance policyholder lawyer at Calfee, Halter & Griswold LLP. He is the Chair of the CMBA’s Young Lawyers Section. He has been a CMBA member since 2010. He can be reached at (216) 622-8200 or areich@calfee.com.
SAVE THE DATE

10th Annual Meeting
Friday, June 2, 2017

Laissez les bons temps rouler!
Let the good times roll!

Cleveland Public Auditorium
Doors open at 11:00 a.m.  Lunch at 12:00 p.m. (sharp)

Join us at our Mardi Gras style celebration for the installation of 2017–2018 CMBA President Darrell A. Clay of Walter | Haverfield LLP and incoming Bar Association and Bar Foundation officers and trustees. As we celebrate a decade of CBA/CCBA unification, we will also honor members who have achieved legend status, including this year’s award recipients and the 2017 class of 50- and 65-year practitioners.
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For more information or to view course listings, please visit Cleveland.FastCLE.com or call (216) 696-2404.
### February

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<td>Estate Planning, Probate &amp; Trust Law Section Lunch &amp; CLE</td>
<td>Litigation Section Lunch &amp; CLE</td>
<td>Municipal Law Update – 10 a.m. President’s Day Seminar – 11 a.m.</td>
<td>Minority Clerkship Program – 3 p.m.</td>
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<td>Grievance Committee Mtg.</td>
<td>3Rs Committee Mtg.</td>
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<td>Insurance Law Section</td>
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<td>WIL Event – 4:30 p.m. (Quicken Loans Arena)</td>
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<td>Professional Conduct Video – 9 a.m.</td>
<td>UPL Training CLE</td>
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<td>Membership Committee Mtg.</td>
<td>Federal Court Video – 1 p.m.</td>
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### March

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<tr>
<td>PLI – 8:30 a.m. International Law Section Lunch &amp; CLE</td>
<td>PLI – 8:30 a.m. Bankruptcy &amp; Commercial Law Section Lunch &amp; CLE</td>
<td>PLI – Securities Offerings – 8:30 a.m. PLI – Negotiating Commercial Leases – 8:30 a.m.</td>
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<td>WIL Section Mtg.</td>
<td>YLS Council Mtg. Movie Night – 6 p.m.</td>
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<td>CMBF Executive Committee Mtg. – 8:15 a.m. Grievance Committee Mtg.</td>
<td>International Women’s Day – 8:30 a.m. PLI – 8:30 a.m. CMBA Executive Committee Mtg. Stokes Scholars Mtg. UPL Committee Mtg. Workers’ Comp Section Mtg. (State Office Building) VLA Committee Mtg.</td>
<td>PLI – 9 a.m. Ethics Committee Mtg. Court Rules Committee Mtg. Real Estate Law Section Lunch</td>
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<td>PLI – 12:30 p.m.</td>
<td>PLI – 8:30 a.m. ADR Section Mtg. &amp; CLE</td>
<td>PLI – 8:30 a.m. CMBA Board of Trustees Mtg. Labor &amp; Employment Section</td>
<td>PLI – 9 a.m.</td>
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<td>PLI – 1 p.m.</td>
<td>PLI – 8:30 a.m. Estate Planning, Probate &amp; Trust Law Section Grievance Committee Mtg. Insurance Law Section</td>
<td>Litigation Section Mtg.</td>
<td>Small &amp; Solo Section Mtg. (Aladdin’s Independence)</td>
<td>Medical/Legal Summit – 1 p.m. Pro Se Divorce Clinic – 10 a.m. (Cleveland Law Library) Pro Se Plus Divorce Clinic – 1 p.m.</td>
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<td>Membership Committee Mtg. Federal Court Video – 1 p.m.</td>
<td>3Rs Committee Mtg.</td>
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*Saturday, March 25 – Medical/Legal Summit – 8 a.m.*

All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
Small downtown Cleveland law firm seeks to hire a part-time (20 hours/week) associate attorney with 2–4 years’ experience, to join the firm’s growing education and state and local tax law practice. At minimum, the successful candidate will provide legal and online research; draft discovery, pleadings, legal memoranda and contracts, and related legal documents; attend administrative hearings, assist with labor negotiations and employment and student related matters and perform general due diligence and legal services beneficial to the office. Candidates should possess a strong academic background and good written and oral communication skills. Hourly-rate compensation commensurate with experience and background. Please send resume and writing sample to jbradley@bms-law.com.

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**Beachwood** – Green Road near Chagrin. Prime office space. Also small to large office suites in Class A building. Receptionist, Westlaw, conference room, office furniture included. Up to 6 offices available. $500 – $750 per office inclusive. Possible legal referrals. (216) 514-6400, ext. 324.

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Hoarard Mishkind of Mishkind Kulwicki Law Co., LPA has been selected for inclusion in Ohio Super Lawyers list for 2017 in the area of plaintiff personal injury medical malpractice. Mr. Mishkind has achieved this recognition for 12 years in a row since 2006. He has also achieved recognition as a Top 100 Ohio Super Lawyer and a Top 50 Cleveland Super Lawyer.

Ulmer & Berne LLP announces the following attorneys have been selected to the 2017 Ohio Super Lawyers list: Inajo D. Chappell, Robert E. Chudakoff, Timothy J. Downing, Jeff S. Dunlap, William D. Edwards, Bill J. Gagliano, Frances Floriano Goins, James A. Goldsmith, Howard M. Groedel, Lori A. Pittman Haas, Richard G. Hardy, Stephen H. Jett, Mark D. Katz, Joshua A. Klarfeld, James N. Kline, David L. Lester, Mary Forbes Lovett, Bruce P. Mandel, Kip Reader, Peter A. Rome, Patricia A. Shlonsky, Stephanie Dutchesk Trudeau, Michael S. Tucker, Michael N. Ungar, and Frederick N. Widen. In addition, the following attorneys have been selected to the Rising Stars list: Daniel A. Gottesman, Paul R. Harris, Candice L. Musiek Capozziello, Daniela Paez, Stanley D. Prybe, Gregory P. Stein, Matthew T. Wholey, and Nicholas B. Wille.


Fisher Phillips announced the formation of its new Pay Equity Practice Group, launched in response to recent legislative and regulatory initiatives and subsequent employer concerns over pay equity issues.

Kaufman Drozdzowski & Grendell, LLC is pleased to announce the start of a newly-formed law firm. Members Art Kaufman, Jim Drozdzowski, Henry Grendell, and Rose Marie L. Fiore combine their large firm and general counsel experience to provide sophisticated representation in the areas of labor and employment, business litigation and general corporate matters.

Amie LaBahn is Of Counsel to the firm.
SAVE THE DATE

10th Annual Meeting
Friday, June 2, 2017

Cleveland Public Auditorium