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We sue insurance companies.

And we do it well.℠

The lawyers you need for the insurance recovery you deserve.℠
ON SPRING TRAINING AND CLE IN ARIZONA

As I write this month's column, it's a "balmy" 14 degrees outside and our driveway is covered with 12" of white powdery stuff. While the snow shovel is trying to lure me with its siren song, I'm holding firm. Eventually, it will melt of its own accord, right?

Mired as we are in the depths of winter, I can't help but grow increasingly excited about CMBA's upcoming Destination CLE. We started this program last year in conjunction with our friends at the Akron Bar Association, and more than 50 of us had a wonderful visit to the Marriott Singer Island in Florida.

As foreshadowed at our 2017 Annual Meeting, this year's Destination CLE will be in Goodyear, Arizona, and has been structured to let attendees take maximum advantage of being in the same town where our beloved Cleveland Indians hold spring training. This year, the Maricopa County Bar Association, the State Bar of Arizona, and the Arizona State University Sandra Day O'Connor College of Law have joined the CMBA-Akron Bar partnership to help host the program.

From the evening of Wednesday, March 21 to Saturday, March 24, we will be ensconced at the gorgeous Renaissance Phoenix Glendale Hotel & Spa. Rack rates for rooms at this property often approach $400 per night, but we've negotiated a fantastic block rate of $289. The Renaissance is located about 20 minutes from the Indians' facility in Goodyear.

Our schedule each day has been structured to maximize attendees' opportunities to hear incredible CLE, see baseball, network and socialize, and maybe get a massage at the spa. We'll have a welcome reception Wednesday evening at 6:00 p.m. at Calico Jack's, in the Westgate Entertainment District, within walking distance of the Renaissance. CLE sessions start Thursday morning at 8:30 a.m. and conclude by 11:45 a.m. sharp. First pitch on Thursday is at 1:05 p.m. against the Padres, and we'll have a group dinner at the Renaissance at 6:45 p.m. On Friday, we'll pre-game at the Tavern & Bowl in the Westgate Entertainment District, and then head to the stadium for a 6:05 p.m. first pitch against the hometown Diamondbacks. As an added bonus, on Friday night, there are post-game fireworks!

Confirmed speakers include CMBA's Bar Counsel Heather Zirke, Akron Bar Counsel Wayne Rice, and Maret Vassella and Stacy Shuman from the State Bar of Arizona on professional conduct; retired Medina County Common Pleas Judge James Kimbler speaking on trial tips; Arizona State University Law School Professor Amy Schraff addressing developments in tax law; and Ruben Reyes, a member of the American Immigration Lawyers Association Board of Governors, updating us on immigration law. Yours truly will catch everyone up on the latest in the world of drone law. Attendance at all sessions provides 9.0 hours of CLE.

The package price for attending the CLE is $325 for members of the CMBA, Akron Bar, and Maricopa County Bar Association, and $425 for non-members, which includes breakfast on Thursday through Saturday, happy hours on Wednesday and Friday, and dinner on Thursday. For a guest to join you at the non-CLE events, the price is $150. Baseball game tickets are an additional $36 per person, per game. We'll be sitting in the Right Field Pavilion, where there are both sunny and shaded areas, and your ticket includes food and non-alcoholic beverages.

Both Southwest and Frontier Airlines have daily non-stops to Phoenix, so jump on your computer, book a ticket, and block your schedule to join us for this can't-miss event. I've already got my flights and room reservations confirmed!

And, speaking of marking your calendars: CMBA's Eleventh Annual Meeting will be held on Friday, June 1, 2018, where Assistant United States Attorney Marlon Primes will take the oath of office and become President. The theme of this year's meeting is "Back to the Future," so we'll be returning to the newly-renovated Marriott at Key Center, the location of many prior wonderful Annual Meetings. Marlon has an ambitious agenda planned for his term, so you don't want to miss his remarks to the membership.

Darrell A. Clay is the tenth President of the CMBA. He is a litigation partner at Walter Haverfield LLP, with a practice focusing on complex civil litigation, white collar criminal defense, and aviation matters. He has been a CMBA member since arriving in Cleveland in April 1997. E-mail your CMBA-related questions or concerns to him at dclay@walterhav.com.
Insurance Law Section

Chair
Mark J. Andreini
Jones Day
mjandreini@jonesday.com

Regular Meeting
Third Tuesday of every month. Meetings alternate between Bar Center and member offices for lunch discussions

What is your goal?
Our chief function is to enhance our Section members’ careers in insurance coverage law. Specifically, we seek to provide Section members with:
• top-quality CLE programming (1 seminar per year);
• bi-monthly case update newsletter focusing on insurance issues;
• bi-monthly luncheon presentations/ discussions of relevant topics;
• networking opportunities;
• enhanced professionalism between insurer-side and policyholder-side lawyers;
• study assistance for lawyers seeking certification as insurance coverage specialists through the OSBA; and
• opportunities to author articles in annual Insurance Law issue of CMBA Bar Journal

Upcoming Events
The Section’s full-day CLE program highlighting latest developments in a broad array of insurance areas will be held in the Spring.

Co-Chairs
Kelli K. Perk
Cuyahoga County Prosecutor’s Office
kperk@prosecutor.cuyahoga County.us

Harvey Labovitz
Collins & Scanlon, LLP
hlab@collins-scanlon.com

Regular Meeting
There are no regular meetings. The Appeals Sub-Committee meets as needed for appeal hearings.

What is your goal?
To ensure that only candidates with the requisite character and fitness become attorneys in Ohio. The committee members conduct character and fitness interviews before an applicant is allowed to sit for the Ohio Bar Examination or is admitted without examination if the candidate meets the criteria and makes recommendations to the Ohio Supreme Court’s Board on Character & Fitness whether the applicant should be admitted to the practice of law in Ohio. The Appeals Sub-Committee conducts appeal hearings when a candidate has not been recommended for admission.

What can members expect?
Members team up with other attorneys who are members of the committee for the character & fitness interviews so you get to know attorneys that you might not meet in your specific practice. The Appeals Sub-Committee hears evidence concerning an applicant’s character & fitness to decide if any issues that were of concern have been successfully addressed.

Upcoming Events
The Admissions Committee will conduct a CLE/Training later this year for new members.

Recent Event
The Admissions Committee conducted a CLE/Training on the admissions process last fall, which included a mock character and fitness interview.
LEADERSHIP IS IMPACT, INFLUENCE AND INSPIRATION

Rebecca Ruppert McMahon

Leadership is not about title or a designation. It’s about impact, influence and inspiration. Impact involves getting results, influence is about spreading the passion you have for your work, and you have to inspire teammates and customers.” So says Robin Sharma, one-time lawyer, best-selling author of “The Monk Who Sold His Ferrari” series and an internationally recognized leadership speaker.

This statement could have been written about our Bar, since in my view, impact, influence and inspiration are the hallmarks of all that we do within the Bar.

As most of our members know, there are two different legal entities at work within our Bar:

- the Bar Association which runs the day-to-day activities of our Bar from our 51 Sections and Committees, annual institutes and other 180+ CLE programs, to pro bono clinics for the homeless and pro se divorce litigants, to community-inclusive initiatives like the Hot Talks series (don’t forget: free and open to the public the 2nd Tuesday of every month at noon in our Conference Center) and our school-based programs (think The Legal Clinics at the Cleveland Metropolitan Bar Association, Mock Trial and 3Rs); and

- the Bar Foundation which, as the charitable fundraising arm of the CMBA, is responsible for raising critical dollars in support of the pro bono and community programs operated by the Bar Association. Thanks to the incredible, collective efforts of all of you, our members, our Bar Association and Bar Foundation are creating significant impact, spreading broad-based influence and sharing what we hope is a contagious inspiration for giving back. We are, by any definition, leaders.

This month, we released our newest Impact Report — the annual report of the Bar Foundation which spotlights the impact the Bar Association’s community and pro bono programs are having in our region, and the incredible fundraising success our Bar Foundation has achieved during the last fiscal year. I hope you’ll take some time to review the report and see just how extensive our combined reach is across northeast Ohio and beyond.

Among other highlights, inside the Impact Report you will learn how:

- **More than 1,000 volunteers donated nearly 20,000 hours in service of nearly 5,000 people** — with an estimated value of just under $3,000,000;

- In carrying out our programs, we collaborated with more than 50 community partners including the Cleveland Metropolitan and East Cleveland School Districts, the Ohio Center for Law Related Education, the Lawyers Guild of the Catholic Diocese, Case Western Reserve University College of Law, Cleveland-Marshall College of Law and each division of the Cuyahoga County Court of Common Pleas — to name just a few!

- Our 3Rs and Mock Trial programs, which build bridges connecting students with mentors and educational opportunities, served 3,700 high school students in the Cleveland and East Cleveland city schools, and 20 other public and private high schools throughout northeast Ohio.

- **More than 500 volunteers** — lawyers, judges and law students — served as advisors, educators, mentors, coaches, cheerleaders and champions, encouraging and inspiring students through our programs.

- As part of the Ohio and Cleveland Mock Trial Competitions, more than 600 students representing 25 Greater Cleveland high schools competed under the guidance of more than 218 Cleveland-area volunteer attorneys and judges;

- Of the 64 college students who have participated in our Louis Stokes Scholars Program since 2011, one graduated from Cleveland-Marshall College of Law in May 2017; seven others are enrolled in law school (three at Cleveland-Marshall, two at Case Western Reserve University, one at Ohio State and one at Capital Law School); and eight more are pursuing law school admission in 2018; and

- Thanks to an army of generous supporters and the hard work and devotion of our event planning committees and staff, the Bar Foundation’s three annual Special Events really “rocked it”, successfully honoring dedicated public servants and community leaders, and raising $243,000 to support our Lawyers Giving Back outreach programs that are building bridges in our community.

(Hand copies of the 2016–2017 Impact Report are being mailed to all Foundation Fellows, and are available any time for pickup at the CMBA or by mail upon request. An electronic version is accessible at CleMetroBar.org/Foundation.)

With a little more than four months left in this membership cycle, our Association and Foundation are on track to complete yet another outstanding year. Thanks to the complementary leadership of Presidents Darrell Clay and Mitch Blair — and that of both organizations’ Boards of Trustees — in addition to the tireless engagement of so many members, our Bar has succeeded in delivering incredibly rich programming, innovative thought leadership, and tremendous fund- and friend-raising events throughout year. And I haven’t even mentioned the recent debut of our user-friendly, always accessible online community, My CMBA!

In short, the state of our Bar is strong — thanks to so many of you! If you have not yet answered the call to speak at an event, write an article, lead a section or committee, plan an event, volunteer for a clinic or otherwise lend your support, come meet us at the Bar soon to find out how you can join the legions of lawyers, paralegals and other business professionals who are leading the way in Cleveland.

Rebecca Ruppert McMahon is the Executive Director of the CMBA and the CMBE. She has been a CMBA member since 1995. She can be reached at (216) 696-3525 or rmcmahon@clemetrobar.org.
Judges approach their life’s work with objectivity, but when it comes to giving back to students in our community, they serve with passion.

Did you know 48 local judges, nearly half of all judges in our area, are involved in one or more of our community service programs? Their impressive outpouring is deeply felt by Cleveland public school students they touch. The feeling is mutual.

Each judge featured here has volunteered in schools for more than a decade, and all attest to the rich rewards of connecting with kids.

Chief Judge Patricia Gaughan, U.S. District Court, serves at John Marshall High School as 3Rs team captain, developing meaningful lessons and inviting students inside the U.S. Courthouse.

“Too many young people have a negative view of law enforcement, attorneys, and the justice system. We have an opportunity to change the dialogue and give them a positive experience.

“Leadership is action, and actions show leadership. I encourage others to get involved.”

Judge Dan Polster, U.S. District Court, is a consistent team captain in his 3Rs classes at Lincoln-West and a consistent mentor to college-going Stokes Scholars.

“Students often are interested in criminal law. I invite Stokes Scholars to observe a criminal sentencing hearing in my court and then discuss it with me.

“I hope to give them an understanding of the role of prosecutor, defense attorney, and judge in the criminal justice process, and prompt them to think about important policy issues in sentencing. They find it thought provoking.”

Judge Lauren Moore, Cleveland Municipal Court, chairs the annual Cleveland Mock Trial Competition, mentors Stokes Scholars, and hosts a summer intern in her court.

“Kids who compete in Mock Trials develop and use critical thinking skills they didn’t know they had. It’s really something to see!

“They dress up, act as lawyers and witnesses, and try cases. They’re competitive, just like athletes. They put forth serious effort to prepare, practice, and rise to the occasion. This practical training expands their aspirations.”

Mitch Blair is vice chairman of Calfee, Halter & Griswold and former chair of its Litigation Group. He tries complex disputes, with special emphasis on securities litigation, including class-action defense. He is president of Cleveland Metropolitan Bar Foundation and has been a CMBA member since 1982. He can be reached at mblair@calfee.com or (216) 622-8361.
Phil Lamos

Firm/Company: Office of the Chapter 13 Trustee, Lauren Helbing
Title: Chief Counsel
CMBA Join Date: 2015
Undergrad: The John Carroll University
Law School: Cleveland-Marshall College of Law

IF YOU WERE NOT PRACTICING LAW, WHAT WOULD YOUR PROFESSION BE?
Either goalie for the New Jersey Devils, a Mexican wrestler, or a bounty hunter.

WHAT ADVICE WOULD YOU GIVE TO A LAW STUDENT?
Sometimes being a good lawyer isn’t about winning your case, but about finding a solution that works for everyone (oh, and pay attention in Civil Procedure).

TELL US ABOUT YOUR FIRST EVER JOB.
I worked for the City of Painesville’s Public Works department, driving around and picking up roadkill.

WHAT’S THE BEST PART ABOUT BEING A LAWYER?
Bankruptcy can be an emotionally draining field, and consumer bankruptcy even more so, but every once in awhile I encounter a debtor who recognizes the gravity of their situation and genuinely appreciates the help we’re able to give them. I even still get Christmas cards from some of them.

WHAT WOULD REALLY SURPRISE PEOPLE ABOUT YOU?
I’m part owner of the Canadian Football League’s Saskatchewan Roughriders.

Mary J. Boyle

Firm/Company: Court of Appeals Of Ohio, Eighth Appellate District
Title: Judge
CMBA Join Date: 2015
Undergrad: Ithaca College
Law School: Cleveland-Marshall College of Law

WHAT DO YOU LOVE ABOUT YOUR JOB?
Almost everything! I love the research, writing, and decision-making required for being an appellate judge. The diversity of cases keeps the job interesting, and the talented appellate attorneys in this region make the job a true pleasure. I also appreciate the impact that the appellate court can have in shaping Ohio law and am honored to be a part of it.

YOUR MOST EMBARRASSING PROFESSIONAL MOMENT!
Although oral argument is one of my favorite parts of my job, it also happens to be the source of my most embarrassing moment. It is customary for all members in the courtroom to stand when the bailiff calls the first case and the judges proceed into the courtroom. Once the judges reach the bench, the bailiff directs for all to be seated. On this particular day, I was the presiding judge and therefore seated front and center between my two colleagues. After the grand procession into the courtroom and while facing the audience in the courtroom, I went to sit down. Unfortunately, I soon discovered — while tumbling to the ground — that my seat had been moved. Graceful? No. Embarrassing? Yes.

ADVICE TO A LAW STUDENT?
Work hard. Network. Take as many legal writing classes as you possibly can. Find a mentor. And make a point to attend a trial at common pleas court or observe an oral argument at the Eighth District Court of Appeals. Aside from being public proceedings, these are great opportunities to see the law in action and to learn outside the classroom.

WHY I LOVE CLEVELAND!
As an avid sports fan, I love that Cleveland is a professional sports town. We have the Indians, the Cavaliers, and even the Browns. I love that these teams are downtown, uniting Cleveland fans and energizing our city. This along with the restaurant scene and arts district, makes Cleveland a top-notch city.

WHY I JOINED THE CMBA?
I joined because the CMBA offers a great mix of networking, education, and opportunities to give back to the community. The organization does an excellent job connecting attorneys and bringing them together to engage in meaningful volunteer work. As an active volunteer in the CMBA’s 3Rs and trial-advocacy programs, I am inspired and reassured by the future leaders of tomorrow. I also have the CMBA to thank for some dear friendships.

Laura J. Gallagher

Firm/Company: Cuyahoga County Probate Court
Title: Judge
CMBA Join Date: 1988
Undergrad: Miami University
Law School: Case Western Reserve School of Law

A RECENT MILESTONE FOR YOUR FAMILY?
I had the honor of “hooding” my middle daughter Lindsay at her graduation from the University Of Cincinnati College of Medicine. It is gratifying to know that all three of my daughters are educated and working in their field of choice.

WHAT DO YOU LOVE ABOUT YOUR JOB?
After settling a trust dispute involving multiple charitable organizations I received a thank you note from a retired priest who had been involved in the case. The note thanked me for my “important ministry.” I value that I am in a position to serve others at critical times in their lives. I especially love finalizing adoptions. Every adoption is in a position to serve others at critical times in their lives. I especially love finalizing adoptions. Every adoption

WHAT WOULD REALLY SURPRISE PEOPLE ABOUT YOU?
I’m part owner of the Canadian Football League’s Saskatchewan Roughriders.

WHAT DO YOU DO FOR FUN?
I love live music and I love a good road trip so I often combine the two. Seeing my favorite bands with friends and family is my happy place!

WHAT DO YOU LOVE ABOUT YOUR JOB?
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In Honor and Remembrance of the Lawyers and Judges of Cleveland and Cuyahoga County who passed away between January 1 – December 31, 2017

Monday, April 16th at Noon
CMBA Conference Center Auditorium

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.

Fred J. Ball
Michael Lamont Belcher
Hon. Jean Murrell Capers
Joyce E. Carlozzi
Zolman Cavitch
Leo Robert Collins
Thomas Lee Dettelbach
Elisabeth Druyfuss
Mark D. Klimek
David P. Kraus
Hon. Robert M. Lawther
George W. MacDonald
James Michael Mackey
Thomas A. McCormack
Gary W. Melsher
John T. Meredith
Richard David Messerman
Harvey Stuart Morrison
Timothy J. Ochsenhirt
William Wilbert Owens
Samuel Richard Petry II
Hon. Raymond L. Pianka
Magistrate Elliot Ian Resnick
Mark Alan Smith
Robert Lee Steely
Lawrence Anthony Sutter III
Hon. Pauline H. Tarver
Fred Weisman

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.
**Balancing the Scales**  
**Wednesday, February 21**

**PROGRAM** 5:00 p.m.  
**NETWORKING RECEPTION** 5 p.m.  

Chief Justice Maureen O’Connor,  
Supreme Court of Ohio  
Laura A. Hauser, Hauser Law LLC  
Jessica Lopez, Roetzel & Andress  
Robert H. Rawson, Jones Day  
Sharon Rowen, Director

**Parenting and Domestic Violence: Theory and Practice**  
Presented by the CMBA’s Family Law Section and the Cuyahoga County Domestic Relations Court

**Friday, February 23**

**CREDITS** 5.25 hours CLE requested  
**REGISTRATION** 8:30 a.m.  
**PROGRAM** 9:00 a.m. - 4:00 p.m.

Cases involved in domestic violence are often the most difficult cases for the courts. Using several adult learning techniques, this workshop will help participants identify the dynamics of domestic violence and how the presence of domestic violence impacts various court proceedings. Participants will work together to evaluate the impact of violence on adult and child victims. Participants will focus on barriers to safety for victims and will enhance participants’ understanding of the multi-faceted considerations that accompany a victim’s decision-making. Participants will delve deeper and apply the information gleaned from dynamics of domestic violence to focus on risk and lethality and apply that knowledge to parenting plans and decision-making using the Ohio Court Guide: Domestic Violence and Allocation of Parental Rights and Responsibilities.

**TOPICS INCLUDE**
- Dynamics of Domestic Violence
- Risk and Lethality: Research and Tools
- Think, Pair, Share
- Domestic Violence Effects in Context: ACEs
- Parenting Orders in a Domestic Violence Context: Ohio Bench Guide

The Cleveland Metropolitan Bar Association and the Northeast Ohio Law Directors Association present

**The Annual President’s Day Seminar:**  
**Certified Public Records Training & Municipal Law Update**  
**Thursday, February 22**

**CREDITS** 6.50 hours CLE requested  
**REGISTRATION** 9:30 a.m.  
**PROGRAM** 10 a.m. – 5:15 p.m. (with lunch)

Welcome & Introductions

**Charter Review**  
Lawrence Keller, Associate Professor; J.D., School of Urban Studies, CSU
Kevin Butler, Director of Law, City of Lakewood
R. Todd Hunt, Walter & Haverfield, City of Richmond Heights and City of Hudson

**Certified Public Record Training**  
Kelly A. Mumaw, Assistant Legal Counsel, Auditor of State

Each pre-registered attendee will receive an Ohio Open Government Law Manual (now available on a CD), a handout with examples, and a certificate of completion at the conclusion of the training. Shortly after the training, the Auditor’s Office will mail certificates of completion to those individuals who attend as walk-ins if space is available. Per the Ohio Revised Code, participants must attend the entire training to receive accreditation. The Auditor’s Office will handle the CLE for this segment. Certificates are distributed at the conclusion of the training and must be picked up in order to receive full credit.

**NEOLDA Meeting and Keynote Address** (no CLE)

**Government Finance & Bonds**  
William Mason, Bricker & Eckler  
**Community Development & Landbank**

**Caselaw Update and Statehouse Update**  
Martin J. Sweeney (invited)  
Michelle J. Sheehan, Reminger Co., LPA  
Holly Wilson, Reminger Co., LPA

**What You Need to Know NOW About The Tax Cuts and Jobs Act**  
**Tuesday, February 27**

**CREDITS** 2.00 CLE hours requested  
**REGISTRATION** 8:00 a.m.  
**PROGRAM** 8:30 – 10:30 a.m.

Welcome & Introductions

**Relevant Changes for Representing Individual Taxpayers**  
Paul Speyer, Maloney + Novotny LLC

Relevant Changes for Representing Businesses and Corporations  
Matthew F. Kadish, Kadish Hinkel & Weibel
Alexander J. Szilvas, BakerHostetler LLP

**Resilience in the Wake of Life’s Curveballs**  
**Thursday, March 8**

**CREDITS** 6.25 CLE and specialization hours  
**REGISTRATION** 8:30 a.m.  
**PROGRAM** 8:30 – 4:15 p.m.

**TOPICS INCLUDE**
- Dealing With the Curveballs Life Throws at Us
- Changing it Up: Non-Traditional Attorney Roles
- Judges’ Panel
- You Dropped A Bomb On Me: Delivering Tough News and Thinking On Your Feet
- Staying Well To Do Well
- Breakout Sessions
  Make It A Good Run: Taking Steps Toward a Political Campaign - presented by the League of Women Voters
  Negotiating for Yourself

Shattering the Glass Ceiling
Our Leadership Academy cohorts continue their experience with a dynamic presentation by Dr. Ellen Burts-Cooper. We are thrilled to welcome Dr. Burts-Cooper to the CMBA for her first program with us, where she will instruct our Academy participants on inclusive leadership.

Dr. Ellen Burts-Cooper is the senior managing partner of Improve Consulting and Training Group, a firm that provides personal and professional development training, coaching and consultation. Improve has been featured in Time Magazine, Black Voices, Smart Business Magazine and Bloomberg BusinessWeek. Dr. Burts-Cooper is on faculty at Case Western Reserve University in the Weatherhead Executive Education Program and The Institute for Management Studies (IMS). She is the author of the books aMAZEing Organizational Teams: Navigating 7 Critical Attributes for Cohesion, Productivity and Resilience and Canine Instinct: A Guide to Survival and Advancement in Corporate America. She also created the workshop curricula “Personal Positioning: Building Personal Brand Equity” and “Don’t Just Think Outside the Box, Make the Box Bigger.” She earned a BS in chemistry from Stillman College in Tuscaloosa, AL, her PhD in organic/polymer chemistry from Virginia Tech in Blacksburg, VA, her MBA from the University of Minnesota, Carlson School of Business and her Lean Six Sigma Master Black Belt certification from 3M Company.

Dr. Burts-Cooper can be reached at (216) 539-8737, Ellen@improveconsulting.biz or visit improveconsulting.biz.
Phantom Drivers – The Evidence Needed to Show One Caused Your Accident

BY STEVEN D. STRANG & QUINN M. SCHMIEGE

You are alone, driving down a four-lane road at night. Suddenly a maroon SUV heading in the opposite direction veers into your lane, coming at you head-on. You swerve, lose control of your vehicle and hit a tree. Your car is totaled, and you are hurt. The maroon SUV never stopped. When the police and EMT arrive, you report that you had no choice — you needed to swerve to avoid a head-on collision.

The police never find the maroon SUV. There are no marks on your car because the SUV never hit you, and there are no marks on the road. You assume that you are fully insured for the accident through the uninsured motorist (UM) coverage in your car insurance policy; after all, weren’t you assumed that you are fully insured for the accident through the uninsured motorist (UM) coverage in your car insurance policy; after all, weren’t you

Mr. Smith filed a claim with Erie Insurance Company for UM benefits and was denied coverage, so he filed a declaratory judgment action against the company. The policy stated, in pertinent part:

“Uninsured motor vehicle” means “motor vehicle:

3. which is a hit-and-run “motor-vehicle.”

The identity of the driver and owner of the hit-and-run vehicle must be unknown and there must be independent corroborative evidence that the negligence or intentional acts of the driver of the hit-and-run vehicle caused the bodily injury. Testimony of [the insured] seeking recovery does not constitute independent corroborative evidence, unless the testimony is supported by additional evidence. (Boldface sic; emphasis added).

The trial court granted summary judgment in Erie’s favor, pointing to the policy language necessitating “independent corroborative evidence” separate from Mr. Smith’s testimony that the unidentified driver caused the accident and finding that there was none.

The Sixth District Court of Appeals reversed, finding that the policy language could be interpreted two ways: one where the “additional evidence” would require independent, third party evidence not derived from the insured, or a second where the “additional evidence” could consist of evidence based on testimony of the insured. As the Sixth District believed it possible to interpret the policy language in more than one manner, it found it to be ambiguous and construed it liberally in favor of the insured. The Sixth District found that the decision conflicted with the Twelfth District’s decision in Brown v. Philadelphia Indemn. Ins. Co., 12th Dist. Warren No. CA2010-10-094, 2011-Ohio-2217, where the Twelfth District found that the evidence Brown presented in opposition to Philadelphia’s summary judgment motion merely relied upon Brown’s account of the incident and could not constitute additional evidence. The Sixth District sua sponte certified a conflict with Brown.

The question presented to the Ohio Supreme Court was whether (1) the policy language was ambiguous and the statements of the insured could serve as “independent corroborative evidence,” or (2) clear that the “additional evidence” must be independent of, and not derived from, the insured’s testimony. The Court agreed with the Sixth District and remanded the case to the trial court.

The Ohio Supreme Court noted that the policy language at issue mirrored the requirement in R.C. 3937.18(B), Ohio’s UM statute, and found that the insured’s testimony could be considered “independent corroborative evidence” if that testimony was supported by additional evidence.

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that the insured's testimony could be considered “independent corroborative evidence” if that testimony was supported by additional evidence. The Ohio Supreme Court clarified that the policy does not say “additional testimony” or “independent third-party testimony.”

In describing possible sources of additional corroborative evidence, the Ohio Supreme Court listed: “[A] police report that describes a straight, dry roadway and that references no impairment of the driver and no finding of excessive speed could provide additional evidence that supports the insured's testimony. A transcript of the insured's conversation with 9-1-1 operator immediately following the accident — when the insured was in peril — could provide additional evidence supporting the insured's testimony. Statements made to a police officer — for which an insured could face criminal liability if they were knowingly false, see R.C. 2917.32(A) (3) and (C) — could constitute evidence that supports the testimony of the insured.”

Justices Kennedy, O'Donnell and French dissented. Justice Kennedy interpreted the contract language “[T]estimony of [the insured] seeking recovery does not constitute independent corroborative evidence, unless the testimony is supported by additional evidence” to mean that the insured's testimony could not by itself constitute independent corroborative evidence. As such, Justice Kennedy wrote that the insured's testimony “repackaged” in some other form like a medical or police report could not be “independent corroborative evidence.”

So what does this mean for your accident? It sounds like your statements made to the police right after the accident would be sufficient to constitute independent corroborative evidence assuming your policy language is similar. But every case may not be as clear-cut. What if the insured cites statements made several weeks after the accident? In other words, is there a temporal requirement to statements corroborating a phantom driver? The Smith decision suggests that there may be — the Supreme Court specifically states that a “transcript of an insured’s conversation with a 9-1-1 operator immediately following the accident — when the insured was in peril,” may suffice. That the decision specifically notes the statement was “immediately” after the accident and that the insured was “in peril” suggests that corroborating statements by the insured may have a similar trustworthiness weight as Ohio Evid. R. 803(1), the present sense impression exception to the hearsay rule, which gives credence to a description of an event made while the declarant was perceiving the event or condition, or immediately thereafter,” or Ohio Evid. R. 803(2), the excited utterance exception to the hearsay exclusion, which allows statements “made while the declarant was under the stress of excitement caused by the event or condition.”

The Smith decision provides some clarity as to what an insured needs to provide “independent corroborative evidence” of a phantom driver. The decision is still new, so there is little case law providing further clarification — we expect that case law will continue to refine the ruling.

ANNA KELBERG KIM
Kelberg Law

Anna Kelberg Kim has been a member of the Volunteer Lawyers for the Arts Committee (VLA) since 2016, and in her relatively brief time has already proven herself to be an engaged and active volunteer. Anna is an entertainment lawyer with an emphasis in music licensing rights; copyright and trademark; formation of business entity; and contract drafting, review, and negotiation, so volunteering with the VLA was a natural fit. In addition to taking on pro bono matters for the VLA, Anna is an engaging speaker, and has presented on legal topics for artists at such programs as ArtWorks, an arts-based job training and college readiness program for high school students in Northeast Ohio; Cleveland Institute of Music; and Sixth City Sounds, a nonprofit serving the Cleveland music scene. She is the owner and creator of BeeAroundTown, a free community-driven calendar that lists local events of all kinds, which helps local artists by providing a platform for them to post upcoming performances and shows, gaining valuable free exposure.

A passionate fan of theater, film, music, and art of all kinds, Anna also volunteers as a violinist for the Suburban Symphony Orchestra, one of Cleveland’s premiere community orchestras. Its 80-plus musicians present five concerts annually free of charge for audiences of 300-500 people. She serves on the board of the Roberto Ocasio Latin Jazz Camp and the Women’s Business Center of Cleveland, and served on the board for the Council Gardens in Cleveland Heights from 2013-2016. Anna also enjoys traveling, and is fluent in Russian.

When asked why she volunteers, Anna said, “Volunteering for artists’ communities brings me a sense of fulfillment and accomplishment, in a way that I can share my knowledge and skills to make an impact on one’s artistic career.”

Thank you, Anna, for your volunteer service to Cleveland’s vibrant arts and culture scene!
Join us at our celebration for the installation of 2018–2019 CMBA President Marlon A. Primes of the United States Attorney’s Office and incoming Bar Association and Bar Foundation officers and trustees. We will observe the theme “back to the future” to celebrate where we’ve been and where we’re heading. We will also honor members who have achieved legend status, including this year’s award recipients and the 2018 class of 50- and 65-year practitioners.
MAXIMIZING INSURANCE COVERAGE FOR CYBERCRIME LOSSES

BY P. WESLEY LAMBERT

With high-profile cybercrime cases dominating the headlines, policyholders and insurers are engaged in an ongoing struggle behind the scenes to define the contours of insurance coverage for what are often massive losses borne by policyholders and third-parties victimized by these crimes. The increasing frequency and complexity of cybercrimes has naturally led to an increase in the number of insurance coverage actions initiated by and against policyholders demanding coverage from their insurers. While courts nationally attempt to more clearly define the legal issues upon which coverage cases will turn, policyholders would be well-served to keep the following issues at the forefront of their minds when planning for, or responding to, cybercrime risks.

1. Evaluate the types of cybercrimes to which you are susceptible.
Policyholders generally face two categories of risks for which they may ultimately purchase coverage. The first is risk to the policyholder’s own property — its computers, data, and financial resources. The second is risk that the policyholder will be liable to third parties if their data is compromised, or if the policyholder is in breach of some other duty to a third party resulting from a cybercrime.

Social engineering schemes have also taken a more prominent role in the cybercrime landscape. Perhaps the most prevalent social engineering scheme, at least as far as the insurance coverage cases are concerned, is the business email compromise (BEC) scheme. Law enforcement agencies have reported seeing BEC schemes perpetrated frequently on businesses that perform regular wire transfer transactions. BEC schemes are often carried out when perpetrators compromise or spoof high-level executives’ email accounts to fraudulently direct electronic funds transfers from the company to the hacker’s bank account.

2. Policyholders may be entitled to a defense against cyber-related claims.
Under many states’ laws, including Ohio’s, an insurer’s duty to defend is distinct from and broader than its indemnity obligation. Thus, policyholders facing third-party claims resulting from cyber liability should evaluate whether their insurance policy will provide for a defense against such claims even where there may ultimately be little or no indemnification for the third party’s loss.

For example, in Eyeblaster, Inc. v. Federal Ins. Co., 613 F.3d 797 (8th Cir. 2010), the Eighth Circuit Court of Appeals held that the policyholder was owed a defense by its insurer against claims that a third-party’s computer, software, and data were injured after using the policyholder’s website. Without deciding whether there was actually indemnity coverage for the various claims asserted against the policyholder, the court held that the insurer had failed to carry its burden of demonstrating that each and every claim alleged by the aggrieved party fell outside the coverage provided by its policy. Policyholders faced with a third-party liability claim should look to this important, but sometimes overlooked, benefit of their policy to defend against costly litigation stemming from cyber-related crimes.
3. Coverage may hinge on whether the loss was “directly” related to the use of a computer. Recent court decisions show that the availability of coverage will likely turn on the way in which the crime was committed, and more specifically, how “directly related” the use of a computer was related to policyholder’s loss. Indeed, the concept of direct versus indirect loss is one of the most frequently litigated issues in cyber-related insurance coverage actions. Importantly for Ohio policyholders, the Sixth Circuit Court of Appeals has held that under Ohio law, requiring that the policyholder’s loss result “directly from” the fraudulent use of a computer is to be applied consistent with a proximate cause standard, and does not require that loss result “solely” or “immediately” from such use. See Retail Ventures, Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, P.A., 691 F.3d 821, 831 (6th Cir. 2012). Notably, applying Michigan law to a case before it during the same year, the Sixth Circuit adopted a “direct-means-direct,” or “immediate” causation standard to a similar claim. See Tooling, Mfg. & Technologies. Ass’n v. Hartford Fire Ins. Co., 693 F.3d 665, 674 (6th Cir. 2012).

Cases from other jurisdictions, seemingly presenting similar fact patterns, have also reached different outcomes based upon differences in the underlying state law. For example, in both Medidata Solutions, Inc. v. Federal Ins. Co., 2017 WL 3268529 (S.D. N.Y. July 21, 2017) and American Tooling Ctr., Inc. v. Travelers Cas. & Sur. Co. of Am., 2017 WL 3263356 (E.D. Mich. Aug. 1, 2017), the policyholder was victimized by criminals using spoofed emails to cause the policyholder’s employees to wire funds to the criminals’ bank accounts. In Medidata, the criminals utilized a series of spoofed emails and other communications to cause Medidata’s employees to wire over $4 million to an overseas bank account believing that she was wiring the money pursuant to instructions from the company’s management. Similarly, in American Tooling, the policyholder’s employee received an email purporting to be from a vendor directing payments on outstanding invoices, totaling approximately $800,000, to the criminal’s bank account.

Despite evaluating similar underlying facts, and applying similar policy language, the district courts reached opposite conclusions on the availability of coverage. In Medidata, the district court found that there was a sufficiently direct nexus between the fraudulent use of a computer and the policyholder’s loss to provide coverage under Medidata’s computer fraud and funds transfer fraud coverages. Distinguishing cases such as Apache Corp. v. Great Am. Ins. Co., 662 Fed.Appx. 252 (5th Cir. 2016) and Pestmaster Services., Inc. v. Travelers Cas. & Sur. Co. of Am., 2014 WL 3844627 (C.D. Cal. July 17, 2014), aff’d in part, vacated in part, 656 Fed.Appx.332 (9th Cir. 2016), the court found that even though events occurred after the original fraudulent email to aid in the scam, the computer fraud was the direct cause of the loss because the “Medidata employees only initiated the transfer as a direct cause of the thief sending spoof emails posing as Medidata’s president.”

In American Tooling, the district court held that a vendor’s spoofed emails, directing payment to the criminal’s bank account, were not the “direct” cause of the policyholder’s loss. Rather, intervening acts, such as the verification of production milestones, authorization of the transfers, and initiation of the transfers without verifying bank account information, “preclude[d] a finding of ‘direct loss’ directly caused” by the use of any computer.” Both Medidata and American Tooling are on appeal to the Second Circuit and Sixth Circuit, respectively.

4. Coverage may depend on who caused your loss. Coverage for cyber-related losses will frequently turn on who caused the policyholder’s loss. For example, coverage may be precluded if the loss was caused by an employee, or by the unauthorized acts of an otherwise authorized user. For example, in Universal Am. Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA, 25 N.Y.3d 675 (2015), the policyholder suffered over $18 million in losses after it paid fraudulent claims submitted by authorized users of its online claims submission system. In holding that no coverage existed under the policyholder’s computer fraud coverage, the court held that the policy insured only against “losses incurred from unauthorized access to Universal’s computer system, and not to losses resulting from fraudulent content submitted to the computer system by authorized users.” Id. At 680-81. Similarly, in Pestmaster, supra at 6, the court found that no coverage existed for theft by a policyholder’s payroll administrator, because the administrator was authorized to withdraw funds from the corporation’s bank account, even though he later used those funds for his own use.

5. Evaluate whether your policy covers this particular injury. In the event the policyholder has coverage for the particular crime in question, it still must determine whether its policy covers the losses suffered by it or the third-party claimant. Disputes over what constitutes a covered loss, particularly in the CGL context, frequently center on whether the impacted property was “tangible property.” For example, in Eyeblaster, the insurer argued that no coverage existed because the claimant alleged that he lost data when his computer was infected with spyware after using Eyeblaster’s website. The court disagreed, finding that coverage potentially existed because the claimant also alleged that he lost use of his computer when the spyware caused it to freeze. The computer itself was “tangible property” that could be a covered loss under the policy at issue.

Similarly, in Vonage Holdings Corp. v. Hartford Fire Ins. Co., 2012 WL 1067694, at *3 (D.N.J. Mar. 29, 2012), a federal district court held that a hacker’s infiltration of Vonage’s computer systems that enabled the hacker to transfer use of Vonage’s telephone call routing servers to unauthorized persons constituted a “loss” that was arguably covered by Vonage’s policy.

However, courts have also found that the loss of data alone, may not qualify as loss or damage to “tangible property.” See Liberty Corp. Capital Ltd. v. Sec. Safe Outlet, Inc., 937 F. Supp. 2d 891, 901 (E.D. Ky. 2013) (because customer email list “has no physical form or characteristics, it simply does not fall within the definition of ‘tangible property.’”), aff’d, 577 Fed. Appx. 399 (6th Cir. 2014). But see, Landmark Am. Ins. Co. v. Gulf Coast Analytical Labs., Inc., No., 2012 WL 1094761, at *4 (M.D. La. Mar. 30, 2012)(finding coverage for loss of electronic data).

The foregoing considerations are just a starting point for a policyholder faced with a potential or actual cybercrime loss. Policyholders are encouraged to work closely with their broker and risk managers when evaluating their risks and coverage needs, and to contact coverage counsel to assist with presenting claims to their insurer and responding to insurer inquiries.

Wes Lambert is a partner in Brouse McDowell’s Litigation and Insurance Recovery Practice Groups. He represents corporate policyholders in maximizing insurance assets and recovering unpaid insurance proceeds. He has been a CMBA member since 2006. He can be reached at (330) 535-5711 or at wlambert@brouse.com.
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D uring much of the past two years, we have had MAGA repeatedly thrown into our often-unreceptive faces. In 2017, however, it was the oft-maligned Justice Clarence Thomas who gave meaning to the phrase. Practically flipping the bird to China in a decision redolent of political instinct, Justice Thomas wrote a copyright opinion that is both a marvel of statutory interpretation and a gift from God to IP attorneys.

In Star Athletica, LLC v. Varsity Brands, Inc., Justice Thomas provided lawyers with a roadmap for protecting their clients against Chinese knockoffs. In the process, he demarcated and markedly expanded the boundaries of intellectual property protection for industrial designs in the 21st century.

The setting is “useful articles”: any item having utility, ranging from a cigarette lighter to an automobile, all of which have historically been unprotectable under copyright law. The backdrop is the 1954 Supreme Court decision in Mazer v. Stein, where the Court held that statuettes used as lamp bases can be protected by copyright.

The Stein Court dealt with two important concepts. The first, that articles of manufacture are protectable only via design patents, was easily dismissed. The 1909 Copyright Act contained no suggestion that patentability bars copyright protection. The second, the expansion in the 1909 Copyright Act of protected “art,” virtually dictated the outcome. The 1870 Act had protected “works of the fine arts.” The 1909 Act was a “works of art,” including “works of artistic craftsmanship, in so far as their form but not their mechanical or utilitarian aspects are concerned.”

Our saga continues in 1960, when the Copyright Office adopted a regulation based in part on Stein, and then again in 1976 when Congress codified the 1960 regulation in the Act itself. The Copyright Act now protects the design of a useful article: “only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of the utilitarian aspects of the article.”

The House Report to the 1976 Act made clear what the statute only hinted at: “Unless the shape of an ... industrial product contains some element that, physically or conceptually, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted under the bill.” The reference to conceptual separability spawned no fewer than nine different tests, many of which focused on the continuing viability of the remaining useful article once the design had been conceptually removed and the marketability of the design upon conceptual removal.

The end story culminates in the Supreme Court decision, affirming the Sixth Circuit’s reversal of the Western District of Tennessee’s finding that designs on cheerleader uniforms were unprotectable. Justice Thomas wrote that “a feature incorporated into the design of a useful article is eligible for copyright protection only if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work — either on its own or fixed in some other tangible medium of expression — if it were imagined separately from the useful article into which it is incorporated.”

It was in addressing these two factors that Justice Thomas greatly expanded the nature and scope of industrial design features that can be perceived as art, significantly simplified the test for conceptual separability, and provided a legal structure to facilitate what Justice Sotomayor anticipated at oral argument: “The first requirement — separate identification — is not onerous. The decisionmaker need only be able to look at the useful article and spot some two- or three-dimensional element that appears to have pictorial, graphic, or sculptural qualities.” Justice Thomas held that the surface decorations on the cheerleading uniforms have such qualities.

Justice Thomas acknowledged that “[t]he independent existence requirement is ordinarily more difficult to satisfy,” noting “[t]he decisionmaker must determine that the separately identified feature has the capacity to exist apart from the utilitarian aspects of the article,” meaning “the feature must be able to exist as its own pictorial, graphic, or sculptural work as defined in §101 once it is imagined apart from the useful article.” But he then dramatically simplified the analysis. “[I]f the arrangement of colors, shapes, stripes, and chevrons on the surface of the [Varsity Brands] cheerleading uniforms were separated from the uniform and applied in another medium — for example, on a painter’s canvas — they would qualify as ‘two-dimensional ... works of ... art,’ §101.”

Justice Breyer disagreed, arguing that removing the designs from the uniforms and placing them on a canvas creates pictures of cheerleading uniforms. But Justice Thomas and the majority were unconvinced. “This is not a bar to copyright. Just as two-dimensional fine art corresponds to the shape of the canvas on which it is painted, two-dimensional applied art correlates to the contours of the article on which it is applied.”

He explained: “[C]onsider, for example, a design etched or painted on the surface of a guitar. If that entire design is imaginatively removed from the guitar’s surface and placed on an album cover, it would still resemble the shape of a guitar. But the image on the cover does not ‘replicate’ the guitar as a useful article. Rather, the design is a two-dimensional work of art that corresponds to the shape of the useful article to which it was applied. ... Failing to protect that art would create an anomaly: It would extend protection to two...
dimensional designs that cover a part of a useful article but would not protect the same design if it covered the entire article.”17

In other words, it doesn’t matter what shape the design takes, if you can place it on a piece of paper as two-dimensional artwork, or if it can stand on its own as a three-dimensional sculptural work, it’s separable and therefore copyrightable.

There are a number of important takeaways from this opinion.

1. The continued viability of the useful article absent the copyrightable design is irrelevant. “The statute does not require the decisionmaker to imagine a fully functioning useful article without the artistic feature. Instead, it requires that the separated feature qualify as a nonuseful pictorial, graphic, or sculptural work on its own.”18

2. Copyright protection extends to artistic features that also provide utility. Justice Thomas wrote that the petitioner’s argument stemmed from its “flawed view that the statute protects ‘solely artistic’ features that have no effect whatsoever on a useful article’s utilitarian function.” But, he indicated, “the statute expressly protects two- and three-dimensional ‘applied art.’”19... An artistic feature that would be eligible for copyright protection on its own cannot lose that protection simply because it was first created as a feature of the design of a useful article, even if it makes that article more useful.”20

3. The entire surface and its shape can be protected. Think of an industrial article as a canvas on which two or three-dimensional art is applied.

4. The Copyright Act recognizes no distinction between purely aesthetic articles and useful works of art. Thus, the cases discussing the ease at which artistic creativity is shown are equally applicable to industrial designs.

5. Marketability of the design absent utilitarian function is irrelevant. Justice Thomas quoted with approval from Bleistein v. Donaldson Litho-graphing Co., “It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits.”21

6. The ultimate shape of the features conceptually removed from the useful article is irrelevant, as they are often likely to retain the shape of the useful article from whence they came.

This opinion dramatically expands the overall IP protection afforded industrial designs. The Court confronted various arguments that could have narrowed or restricted the scope of the opinion, and rebuffed each one. It is an opinion grounded exclusively in statutory interpretation and teaches that the copyright statute provides remarkably broad protection to industrial designs.

Although Justice Thomas never says so explicitly, the standard for determining whether “art” is copyrightable is de minimis. Stein certainly suggested that a broad and expansive concept of art be applied. And the Court has previously held that the requisite level of artistic creativity for a valid copyright is “extremely low, even a slight amount will suffice.” The vast majority of works make the grade quite easily, as they possess some creative spark, “no matter how crude, humble or obvious” it might be. Feist Publications, Inc. v. Rural Telephone Service Co.22

As one commentator noted, “once the court has said that any design can gain copyright protection if it would be protectable if placed first on a piece of paper, it really has ensured that all but the subllest … designs will be able to gain copyright protection.”23

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1 Warren Zevon, Lawyers, Guns and Money, from the album, Excitable Boy (A&M Records 1978) (rid, “send lawyers, guns and money” “to get me out of this.”)
9 Id. at 11.
10 Id. at 12-13.
11 Id. at 14 (citations omitted emphasis added). This was an important point. Orual argument focused on the fact that the designs on the uniforms were perceived as slimming and therefore functional.
12 Id. at 15-16.
13 188 U.S. 239, 251 (1903) (Holmes J).
15 Id.
17 580 U.S. at __, 136 S. Ct. 1823; Slip Opinion at 7.
18 Id. at 10.
19 Id. at 7.
20 Id.
21 Id.
22 Id.
23 Id.
Is Advice You Seek from Brokers Protected?

BY STACY RC BERLINER

When they have questions about insurance claims, a policyholder’s first instinct is often to ask their insurance broker for advice. Is this going to be covered? Why or why not? What amount, if any, will I have to pay out-of-pocket? The broker’s specialized knowledge about the policyholder’s claim history and insurance program make them a valuable resource.

Not surprisingly, when coverage disputes turn into litigation, it is common for policyholders and their in-house counsel to involve brokers in claim strategy and seek the broker’s opinion on disputed coverage issues. Similarly, a policyholder’s outside counsel may ask brokers to participate in litigation and settlement strategies or request their assistance in preparing correspondence and pleadings to insurers.

Policymakers tend to think that the substance of these interactions and discussions are protected by the attorney-client privilege and work product doctrine. But, the protected nature of these interactions and discussions, like most issues involving coverage, a fact-intensive question.

This article is intended to (1) caution policyholders that communications with their broker may not be protected; and (2) provide practice tips that may assist them in asserting that they are.

The Fight Begins
A dispute regarding protection for communications between a policyholder and a broker usually arises when an insurer serves written discovery requests seeking copies of “all communication” between the policyholder and the broker. To the insurers, this request is logical — they hope that the communication will reveal policyholder claim, litigation, and settlement strategies; acknowledge pitfalls in coverage positions; or reveal differences in coverage positions between the broker, policyholder, and counsel that could complicate a bad faith claim.

What Policyholders Must Demonstrate
The burden of demonstrating that the communications or information exchanged are protected is on the policyholder. A blanket assertion of privilege is often insufficient. Also, documents exchanged between the policyholder and its broker that constitute routine business communications are not likely protected. Accordingly, courts are less likely to find communications generally related to the procurement of the policy, claim notice, or customary claim adjustment to be privileged.

Courts recognizing an attorney-client privilege or work product doctrine may require that the policyholder provide evidence that the broker was acting as the policyholder’s agent and at the direction of the policyholder’s in-house or outside counsel. Such evidence should demonstrate that the broker is a “necessary advisor” for purposes of obtaining coverage for the claim in dispute or whose presence was necessary to assist counsel in gathering information, formulating legal advice, or preparing pleadings. In other words, courts may require policyholders to demonstrate that the broker was present for the purpose of obtaining and securing legal advice and with the intention that it be kept confidential.

Practical Tips
Be careful. There is never a guarantee that a court will find that broker communications, even satisfying the below criteria, will be protected by the attorney-client privilege or work product doctrine. Nonetheless, based upon recent precedent from courts around the country, broker communications are more
likely to be protected by the attorney-client privilege or work product doctrine when:
• The broker has been retained as an agent of the policyholder;
• The communications are at the direction of or request of counsel. Courts are less inclined to find communications between non-attorney employees and brokers to be protected;
• The communications seek, request, or obtain legal advice, or were necessary to facilitate the rendition of legal services for the policyholder;
• The parties expressly state that they intend the communications to be confidential; and
• The broker is consulted as a result of his special expertise in a complex area of insurance — e.g., maritime insurance policy procurement.

It is common for policyholders to submit evidentiary support in the form of affidavits from both in-house counsel and the broker attesting that the broker was retained as an agent of the policyholder, both parties understood the communications to be confidential, and the communications satisfy the above-bulleted criteria.

Also, policyholders and brokers should consider entering into a formal consulting agreement before engaging in privileged communications. A formal consulting agreement should state that the broker was separately retained as an agent of the policyholder and for the purpose of assisting the policyholder in formulating legal strategies and in providing legal advice or services. The agreement should state that any communications are expected to remain confidential and private, and protected by the attorney-client privilege and work product doctrine. The policyholder will still have to demonstrate that the communications seek, request, or obtain legal advice, or were necessary to facilitate the rendition of legal services for the policyholder. However, the formal agreement may foreclose insurer arguments that the broker was not acting as an agent of the policyholder, and demonstrate the purpose for the exchange.

For a separate fee, some brokerage firms have separate departments for the express purpose of assisting policyholders in formulating their coverage and legal strategies, and in providing legal advice or services. In fact, many of these departments employ attorneys with expertise in a specific area of insurance law to assist the policyholder. Policyholders should inquire...
whether this is a service provided by their brokerage firm and, if so, enter into a formal consulting agreement with this department.

One More Pitfall - Underlying Case Information and the Common Interest Doctrine

Brokers or their affiliates often provide claims processing and handling services. As a result, policyholders may routinely forward information sent to them from underlying defense counsel to keep in the broker's claim file. The shared documents may include defense counsel's strategy and settlement memoranda, draft pleadings and motions, and investigative reports prepared at the direction of counsel. Much like coverage communications, insurers and underlying plaintiffs' counsel may argue that sharing of these files with the third-party broker waived any privilege or work product doctrine protections. In order for the policyholder to maintain the privilege, the policyholder may have to show that it and the broker had a "common interest" in the defense of the underlying suit. In other words, the policyholder has to demonstrate that the disclosures were made in the course of formulating a common legal strategy — that the broker had a role in the development or presentation of the underlying case's defense.

Conclusion

While adhering to these practical tips should enhance a policyholder's chance of protecting broker communications, policyholders should know that not all jurisdictions and courts have held that communications between a policyholder and broker fall within the attorney-client privilege or work product doctrine.

Today, it is so easy to copy and forward an e-mail, especially to a trusted broker whom you have relied on for years of advice. Before you hit send, I caution you to stop and think: "Do I want this to be discoverable? Can this be construed in such a way as to hurt my claim for coverage?" If there is any question, it may be time to consult an insurance coverage attorney.

Stacy RC Berliner is a shareholder at Thacker Robinson Zinz LPA and an OSBA-Certified Specialist in Insurance Coverage Law who represents corporate policyholders in obtaining recovery of insurance proceeds. She has been a CMBA member since 2004. She can be reached at (216) 456-3840 or sberliner@trzlaw.com.
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While you have been litigating your cases in court, insurers and self-insured companies have developed an entire alternative dispute resolution system to resolve their claims, and you may not even know about it. It’s been around since 1943 and has grown so dramatically that it currently resolves over 1.7 million subrogation claims and over $11.4 billion in claims annually. It’s called Arbitration Forums (AF) and it is the nation’s largest arbitration and subrogation services provider. While arbitration for non-members is not compulsory, non-members can still utilize the resource to their own benefit by consenting under the right circumstances.

Insurance and self-insured carriers often enter into agreements voluntarily forgoing litigation in favor of Arbitration Forums on all of their applicable claims. Membership to Arbitration Forums for insurers and self-insured companies is available at no cost on AF’s website www.arbfile.org. However, Arbitration Forums can be utilized by non-members in certain circumstances without having to adopt the philosophy of handling all claims through the forum. The Arbitration Agreement allows a non-member to submit a claim for hearing in AF by obtaining written consent of all members involved in the case. By voluntarily consenting to have the case heard in AF, the parties agree to be bound by AF’s Agreement and Rules.

Arbitration Forums is different from court ordered arbitration. Although there is no membership fee, there is a nominal filing fee for each case filed. This provides a low-cost alternative for companies that want to utilize the service. All filings are submitted online by completing an application, which includes a contentions section to argue the theory of your case. Evidence is also submitted online to support your claim. The rules of evidence in a traditional case do not apply in Arbitration Forums and the cases are determined by individuals who are already knowledgeable about the claims process. Therefore, there is no need to educate a panel of jurors with no exposure to liability issues. All decisions are confidential, final, and binding. Since the opposing parties are insured, recovery on an award is rarely an issue.

The types of forums in AF include Auto (resolves intercompany subrogation involving automobile physical damage), PIP (settles disputes arising from no-fault coverage), Medpay (resolves disputes arising from subrogation of medical payments coverage), Special (resolves disputes regarding concurrent, overlapping, or excess/primary coverage and bodily injury uninsured motorist claims), Property (resolves claims involving fire, inland marine, or other first-party property), and Uninsured (coverage questions under automobile liability policies where disclaimers result in a claim against another member).

There are several benefits to Arbitration Forums over litigation. Timeline to resolution is one of the biggest differences. It usually takes about 90 days to resolve an arbitration claim versus the years it can take to get through litigation. The costs are also significantly lower with a minimal filing fee of around $40 and no court costs. Even legal fees can be avoided, although many companies elect for attorneys to draft arbitrations for them considering the persuasive arguments on liability and damages that are necessary to prove the case. However, legalese is not necessary because the audience hearing the case is not a judge and usually
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not an attorney. There are training programs available and the process of filing an arbitration online is user-friendly.

Arbitration Forums is also an excellent venue to promote the benefits that subrogation provides. Arbitrating recovery claims reimburses insured’s deductibles, keeps premiums down, prevents double recoveries, and holds third parties accountable, all in record speed compared to litigating claims.

Arbitration Forums utilizes a neutral panel of over 8,800 claims professionals from member companies. Arbitrators in the forum must have five years of claims experience and must demonstrate the required understanding in order to render impartial and informed decisions. While these panelists are clearly very knowledgeable, it is important to keep in mind that the decision-makers are largely experienced claims adjusters. This should be considered when determining whether to take advantage of the service.

Personal injury claims provide layers of complications, but Arbitration Forums can help. It is often complicated to explain the right of subrogation to injured parties because they perceive this contractual right of insurers as giving away their settlement proceeds despite premiums being paid. If the subrogation claim is separated from the personal injury litigation and filed in Arbitration Forums, it obviates the need to explain to the injured party the contractual requirement to repay their carrier for the subrogation claim. The process to settle a personal injury claim can be made simpler and the injured party can walk away feeling fully compensated through the settlement result because it will not be conditioned on the insurance carrier approving the amount they receive through the subrogation process.

If dealing with a personal injury claim where a subrogation claim is present and the applicable parties consent, it is possible to have the subrogation claim removed from the personal injury claim by using Arbitration Forums. Should arbitration apply, the subrogation claim can be separated from the personal injury claim. This removes the insurance company from the eyes of the jury and allows the focus to remain on the injured party.

If a non-member self-insured plaintiff company has an option to file suit against an insured tortfeasor, a pre-suit negotiation strategy can be to discuss consenting to Arbitration Forums with the insured tortfeasor’s carrier, even if they are not members of Arbitration Forums. Just because a carrier is not a member of Arbitration Forums does not mean that the carrier would not consider it for a particular file. The insurer may just not know about the existence of the forum. If the insurer wants to protect its insured, they may be interested in Arbitration Forums as a viable option it had not considered before. This may be in the best interest of the insured because when subrogation claims are filed in Arbitration Forums, the insured’s credit record is not impacted since the arbitration claim is filed directly against the insurance carrier and not against the insured.

It could also be a good way to test the theory of liability of the injured party without res judicata being a potential barrier to a recovery. Arguing the liability of the tortfeasor through Arbitration Forums can provide a likely test result of how a jury might view the case in litigation. Knowing the results of the Arbitration Forums argument can assist with settlement negotiations and strategy of the pending or upcoming litigation.

Aside from personal injury claims, a member carrier may want to suggest Arbitration Forums as a viable option to a self-insured company tortfeasor who may not have heard of the venue. In turn, a self-insured company that
has experienced a loss may want to check the Arbitration Forums website to see if the opposing carrier is already a member. If litigation is not cost effective and a settlement without suit is not possible, the resolution through Arbitration Forums will be significantly more efficient from a time and cost perspective. Arbitration Forums is an especially good option for lower balance claims that are not cost effective to litigate, but create a better value than merely closing the claim.

Arbitration Forums was created by the insurance industry for the benefit of the insurance industry. The intent was for insurance carriers to voluntarily forego litigation and resolve their disputes in an alternative dispute forum. It was to be cost effective and time efficient. Decisions were to be final and binding and the claims were to be collectable. But, what was created with the intent to benefit the insurance industry, can also be used by personal injury attorneys or corporate attorneys to their benefit and the benefit of their injured party or self-insured clients. As lawyers, it is our duty to advocate for our clients in any scenario we can. Do not forget to think outside the box and take advantage of unusual venues like Arbitration Forums to resolve claims to the benefit of your client.

Kimberly Rathbone is a Partner of the insurance subrogation firm of Rathbone Group, LLC. Ms. Rathbone is admitted to the Ohio State Bar, the Northern District of Ohio Federal Court and the 6th and 7th Circuit Courts of Appeals. Her past speaking engagements include speaking at NASP’s 2006, 2007, 2010 Conferences, NASP’s webinar in 2014, and speaking locally in 2006, 2007 & 2017. She was featured in Cleveland Crain’s Business Magazine and in Cleveland Business Connects Magazine. She has been a CMBA member since 2017. She can be reached at (800) 870-5521 or krathbone@rathbonegroup.com.

Ana Zgela is an Associate of the insurance subrogation firm of Rathbone Group, LLC. Ms. Zgela was admitted to the Ohio State Bar in 2001. Since being admitted to the Ohio State Bar, Ms. Zgela has focused her entire legal practice in the insurance subrogation and insurance arbitration field. Her Case Summary was published in The Subrogator and she was a Co-Speaker at a local NASP Chapter meeting in Columbus Ohio in 2016 entitled, “Tips, Techniques and Innovative Approaches to Intercompany Arbitration.” She can be reached at (800) 870-5521 or azgela@rathbonegroup.com.
Find the LRS application at CleMetroBar.org/LawyerReferral or contact Katie Donovan Onders at (216) 539-5979

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Ryan Fisher, LRS attorney & Vice-Chair, LRS Oversight Committee
In construction nearly completed on the Huntington Park Garage, the reality is that the Downtown Hilton and Convention Center will continue to fill a substantial portion of the garage, limiting the number of spaces available to litigants, counsel and other visitors to the Old Courthouse.

Difficulties in accessing the Courthouse will be lessened significantly, we hope, by the increased ability to E-File case documents using the Court's growing list of edit-ready forms, access to case documents online, and recent updates to the E-File Gateway system.

With the rollout of case types available for E-File has been a steady and deliberate climb toward a paperless docket, the end result offers far more than simply sending digital documents to a glorified email inbox. Instead, the Court has worked with its software vendor, ProWare, to develop a user-driven application in which documents bypass the multiple hands and departments of traditional clerk review. The resulting portal (available on weekends and other off-hours) updates user data in real time and is even able to store works-in-progress.

Currently the Probate Court can accommodate 12 types of filings using the E-File Gateway System. The Court's website, http://probate.cuyahogacounty.us, includes an E-File home page that lists available document types as well as screen-by-screen user guides. Our newly updated TOPICS pages provide patrons essential information about common, and some uncommon, probate filings and procedures. Our E-File FAQ is a wealth of quick facts and tips.

The Court has established an E-Filing department located in Room 123 that includes kiosks and a friendly help desk. The kiosks allow persons without home computers, or those at Court who simply prefer to skip the lines, to create an account and upload their documents, all with only a valid email address to register.

To date, the Probate Court E-File system has about 2,600 registered users. Nearly 70% of registered attorneys receive E-Notices. Attorneys who have signed up for E-Notices receive regular updates of available case types and, since March of last year, were extended a second and third support email address at which to receive hearing notices. An added benefit is that all registered attorneys have their E-File account linked to their existing cases and entire history of cases filed at Court.

While there is no current or anticipated requirement that documents must be filed by E-File, there are many realized efficiencies in using this process. All items are reviewed by the E-File department prior to acceptance, ensuring only accurately completed documents are being moved through the system. Filing guides are available for most filings, and the E-File clerks have the option to send entire submissions to other department supervisors and magistrates for questions and quick review. The result is expedited review and ruling on the most common pleadings and motions filed with the Court. And because E-Filed documents are typewritten, there are fewer errors for data entry and a significant increase in the effectiveness of our redaction software.

Any required filing fees are paid by a credit or debit card. For security purposes, cards are never stored with the E-File Gateway, but new in early 2018 the department will debut a user-managed shared payment-method system: E-Firm. The E-Firm portal will enable attorneys to pay for filings as authorized users of a shared individual or firm credit card.

New features in 2018 include adding several new Adversarial and Guardianship filings to the list of available case types. And with these filings, a new feature in the E-File system will enable attorneys to submit MSWord documents as proposed orders accessible to Judges and magistrates at a click, processed and viewable as PDFs on our docket immediately after they are signed all without the use of a printer (or a parking space).
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Homeowners insurance policies might not insure your home. What is a “residence premises” and when (and why) does it matter?

BY JUSTIN RUDIN

Consider the scenarios where an elderly insured moves out of her home and into a nursing home, or an insured who has bought and moved to a new home but still owns and insures the old one, or an insured who is remodeling a home before moving in. Based on a strict reading of the “where you reside” language commonly found in the policy’s definition of “residence premises,” all of these insureds may have been paying for dwelling coverage that no longer applies or never applied in the first place.

Homeowner’s policies insure the dwelling under Coverage A which is typically described as follows: “We cover ... [t]he dwelling on the ‘residence premises’ shown in the Declarations[.]” The term “residence premises” is defined in the definitions section of the policy to mean: “The one family dwelling where you reside[.]”

Some insurers and courts have relied on a strict and technical reading of the “where you reside” language found in the definition of “residence premises” and concluded that it imposes a continuous residency requirement on the named insured. According to this view, the policy covers the “dwelling on the ‘residence premises’” if the named insured does not reside at the dwelling when an otherwise insured loss occurs, then the dwelling is not a “residence premises,” and therefore not covered. See, e.g. Heniser v. Frankenmuth Mut. Ins. Co. (Mich. 1995), 534 N.W.2d 502.

Other courts have recognized the patent unfairness of permitting an insurer to avoid coverage for a devastating loss to what is often the insured’s most valuable asset — their home — based on an obscure policy definition that is indirectly referenced in the coverage describing the insured dwelling. To avoid this result, these decisions construe the “where you reside” language as either a descriptive statement that identifies the insured property or as a mere representation that the insured resides at the dwelling when the policy was initially issued. See, e.g. Farmers Ins. Co. v. Trutanich (Or. Ct. App. 1993), 858 P.2d 1332; Rush v. Hartford Mut. Ins. Co. (W.D. Va. 1987), 652 F. Supp. 1432; Hufstetter v. Michigan Mut. Ins. Co. (Mo. 1989), 778 S.W.2d 391.

In October of 2015, ISO issued an endorsement modifying the meaning of “residence premises” in an attempt to solve the issues created by the prior definition. Endorsement HO 06 48 10 15, which applies to the standard HO 03 homeowner’s insurance policy, redefines “residence premises” to mean the “dwelling where you reside...on the inception date of the policy period shown in the Declarations.” The intent of this new language is to more explicitly describe that the residency requirement is satisfied as long as the insured resides at the residence premises on the inception date of the policy period.

Presently, there are no reported case decisions that have interpreted and applied the revised definition. However, a few observations can be made:

• Tying the “where you reside” language in the definition of “residence premises” to a specific time period (e.g., “on the inception date of the policy period shown on the declarations”) reinforces the interpretation that residency is a requirement that must be satisfied as a condition of coverage as opposed to a mere statement describing or identifying the insured property;

• The revised definition will make it harder for insurers to deny coverage when the insured resides at the dwelling on the inception date of the policy or renewal period in the event a loss occurs after an insured relocates during the same policy period;
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• Non-residency that continues into the next policy period may make losses occurring during that time more likely to be denied since the revised definition explicitly focuses on “where you reside” on the “inception date of the policy period.”

• The revised definition offers no help to an insured who delays moving into a newly purchased home after the policy period’s inception.

• A strict application can produce anomalous results. Read literally, an insured who moves into the home after the policy’s inception date and then suffers a loss while residing at the home would not have coverage because residence must exist as of the inception date to meet the revised definition. On the other hand, an insured could move out the day after the inception of the policy period, leave the property unoccupied for the rest of the year, and still have coverage.

Given the lack of consensus as to the effect of the “where you reside” language in the prior definition and lack of judicial insight as to the application of the revised definition, the only sure way to avoid a coverage dispute based on the “residence premises” defense is for the insured to notify their insurance agent anytime they move from the insured dwelling.

In the event that a loss occurs and the policyholder is faced with the “residence premises” defense, a policyholder should consider the following as possible bases to establish coverage.

First, confirm the actual policy language. Since many homeowner’s policies still use the original definition, insurers faced with a “residence premises” defense may bolster their argument that the language is ambiguous based on the insurance industry’s adoption of the revised definition. The revised definition suggests that when an insurance company wants to condition coverage on the named insured residing at the dwelling at a certain time, it specifically says so in the policy. Therefore, it is fair to argue that the prior definition’s failure to specify any time or duration of residency makes it ambiguous as to whether it requires the named insured to reside at the property on the policy’s inception date, the time of the loss, or if it is even a requirement at all as opposed to simply a description of the property being insured as previous cases have held.


Second, copies of the insurance application should be reviewed. It is not an uncommon scenario for an unsophisticated prospective insured to ask an agent for insurance on a home they own but do not live in (e.g. “I need insurance for my house.”). The agent may simply assume the applicant presently lives at the property, indicate this on the application, and then obtain a homeowners insurance policy with a residency requirement instead of a dwelling policy which does not. If the agent never asked the applicant where he would be living as of the expected date that coverage would start, the agent may be held accountable under a negligence theory or the insurer may be estopped from relying on this defense. See Roberts v. Maine Bonding and Cas. Co. (Me. 1979), 404 A.2d 238, 241.

Third, always consider whether there is any evidence that would, in fact, support a finding of residence. Consistent with other jurisdictions, Ohio courts have recognized that the terms “reside” and “residence” are “ambiguous, elastic, or relative term[s], and include[] a very temporary, as well as a permanent abode.” See Hicks v. Memonite Mut. Ins. Co. (Ohio App.), 2011-Ohio-499, par. 45 quoting Prudential Prop. & Cas. Ins. Co. v. Koby (1997), 124 Ohio App. 3d at 181-82. See also Harrison v. Allstate Indem. Co. (N.Y. Supreme Ct. 2017), 54 Misc. 3d 1224(A), *3 (evidence that insureds intended that their three year absence from the house was to be temporary and that they planned to return as soon as possible, coupled with the fact that they left all of their possessions there, continued to pay taxes, and made property improvements, created factual question as whether policy’s residence requirement satisfied). While each fact pattern will play a significant role in determining residence, Koby, supra at 175, the reason(s) for the insured’s absence from the property, the frequency or number of times the insured was present at the property, whether the insured left any belongings at the property and used the address for mailing or other purposes can support a finding the insured still maintained a “residence” there for purposes of insurance coverage.

It is critical know how the policy defines the “residence premises” and the facts that can support coverage if the question of where the insured resides is in dispute. Like many coverage issues, slight differences in policy language can mean the difference between a catastrophic uninsured loss of a home or a covered claim.
## February

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<td>Fellows Committee Meeting – 8:15 a.m.</td>
<td>President’s Day Seminar – 9 a.m.</td>
<td>Parenting &amp; Domestic Violence CLE – 8:30 a.m.</td>
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<tr>
<td>Joint Estate Planning, Probate &amp; Trust Law and Real Estate Sections</td>
<td>PLI Simulcast – 8:30 a.m.</td>
<td>Thought Leadership Committee Meeting – 8 a.m.</td>
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<tr>
<td>Grievance Committee Meeting</td>
<td>CMBA BOT Meeting</td>
<td>CMBA Leadership Academy – 9 a.m.</td>
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<tr>
<td>Criminal Law Section</td>
<td>Labor &amp; Employment Section Lunch and CLE</td>
<td>Court Rules Committee Meeting</td>
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### Friday

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<tr>
<th>MONDAY</th>
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## March

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<td>26</td>
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<tr>
<td>Tax CLE – 8:30 a.m.</td>
<td>PLI Simulcast – 8 a.m.</td>
<td>PLI Simulcast – 8:30 a.m.</td>
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<tr>
<td>Mental Health &amp; Well. Mtg.</td>
<td>3Rs Committee Meeting</td>
<td>Grievance Committee Meeting</td>
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<tr>
<td>Bankruptcy Section Lunch &amp; CLE – 12:30 p.m.</td>
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### Wednesday

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<tr>
<td>CMBF Executive Committee Meeting – 8 a.m.</td>
<td>Grievance Committee Meeting</td>
<td>PLI Simulcast – 8:30 a.m.</td>
<td>International Women’s Day Seminar – 8 a.m.</td>
<td>PLI Simulcast – 8:30 a.m.</td>
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<tr>
<td>CMBF Endowment Committee Meeting – 4 p.m.</td>
<td>CMBF Board Meeting</td>
<td>YLS Council Meeting</td>
<td>PLI Simulcast – 8:30 a.m.</td>
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<td>Movie Night – 6 p.m.</td>
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### Thursday

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<tr>
<td>PLI Simulcast – 8:30 a.m.</td>
<td>Hot Talks JFA Committee Meeting</td>
<td>PLI Simulcast – 8:30 a.m.</td>
<td>PLI Simulcast – 8:30 a.m.</td>
<td>Pro Se Divorce Clinic – 10 a.m. (Law Library)</td>
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<tr>
<td></td>
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<td>Exec. Comm. Meeting</td>
<td>Family Law Section Meeting &amp; CLE</td>
<td>Pro Se Plus Divorce Clinic – 1 p.m. (Law Library)</td>
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<td>Joint Litigation &amp; Environmental Lunch &amp; CLE</td>
<td>Reach Out – 4 p.m.</td>
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<td>UPL Committee</td>
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<td>Stokes Scholars Comm.</td>
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<td>Destination CLE</td>
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<tr>
<td>Estate Planning, Probate &amp; Trust Law Section</td>
<td>Family Law Section Meeting &amp; CLE</td>
<td>Thought Leadership – 8 a.m.</td>
<td>PLI Simulcast – 8:30 a.m.</td>
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<tr>
<td>Grievance Committee Meeting</td>
<td>Reach Out – 4 p.m.</td>
<td>PLI Simulcast – 8:30 a.m.</td>
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All events held at noon at the CMBA Conference Center unless otherwise noted.
Schraff & King Co., LPA, is accepting applications for a Probate and Medicaid paralegal position. Please send resume and cover letter to John Thomas at jthomas@schraffking.com.

Job posting for Director of Offender Services, Summit County Court of Common Pleas. Go to http://www.summitcpcourt.net/default.aspx for application information.

### Employment

Terminal Tower – Law offices available in prime location with reception area, secretarial space, conference room, copier, fax and kitchen. Reasonable rent. Call (216) 241-2022.

Unique Cleveland Warehouse District – Executive and Associate Offices with available full services, amenities, and referrals. Convenient to courthouses, restaurants, and parking. Call Pam MacAdams (216) 621-4244.

**Listings**

### Office Space/Sharing

- **55 Public Square** – Office available in nicely decorated suite with receptionist, fax and copier. (216) 771-8084.
- **75 Public Square** – One completely furnished office – Gary (216) 621-9181.
- **820 W. Superior Ave** – 2 large offices available in existing suite with 4 other attorneys. Full amenities. Support staff space available. Call (216) 241-3646.
- **Cleveland** – Attorney office space $275/month. Contact Stanley Josselson, 1276 W. 3rd Street #411, Cleveland. (216) 696-8070. Cell (216) 314-6194, josso@att.net
- **Downtown Cleveland** – Rockefeller Bldg. @ W. 6th & Superior: Exceptional office space, exceptional value. All window space, conference room/library, kitchen, receptionist, and handicap accessibility. Furniture is available. Call (216) 696-3929.
- **IMG Center** – E. 9th and St. Clair – Office space available in suite with several other attorneys. Telephone, receptionist, fax, copier; secretarial available. Referrals possible. Contact Ty Fazio at (216) 589-5622.

### Law Practices Wanted/For Sale

Established workers’ compensation firm looking to increase client base by taking over an existing book of clients. If interested in discussing this, please call (216) 990-7951.

Looking to slow down or starting to think about retirement? Attorney with established probate/estate planning/small business practice looking to expand current practice; (216) 245-8861.

### Suburbs – East

- **Beachwood** – Green Road near Chagrin. Prime office space. Also small to large offices 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.
- **Beachwood** – Office for lease, either fully furnished or vacant (216) 856-5600.
- **Beachwood** – Office in gorgeous suite on Chagrin. Copier, fax, conference room and other amenities provided. Possible litigation referrals. Contact Craig W. Relman. (216) 514-4981.
- **Beachwood** – LaPlace – corner of Richmond and Cedar Road. Large windowed office with amenities and free underground parking. Reasonable rent. For more information, call or email (216) 292-4666 or limlaw@sbcglobal.net.
- **Bedford** – Law offices available with conference room/library, kitchen, receptionist, and mentoring from C|M grad with 40+ years legal experience. (440) 439-5959.
- **Chagrin Falls** – Furnished office available with other attorneys in eastside law firm. Chagrin Falls location with parking. $500/month includes office, WiFi, kitchen and conference room. Contact lawfirmchagrinfalls@gmail.com.
- **Chardon Square** – Offices and large conference room in prime storefront location on Main Street opposite Geauga County Courthouse for possible space sharing or partial sublease. Contact Bill Hofstetter at (440) 285-2247.
- **Mayfield Heights** – Beautiful office space available with conference room, receptionist, all necessary law firm amenities, complementary practices. Rent negotiable. (440) 473-5262.
- **Mentor** – Two offices available at Carrabine & Reardon. Expense sharing arrangement is negotiable. Great location! Contact Jim Carrabine at (440) 974-9911.

### Suburbs – South

- **Brecksville** – Conference room and mailing services available in the Ganley Building for $50 or $150 per month. Possible legal referrals. (440) 526-6411, ask for Laurie.
- **Parma/North Royalton** – Office spaces in modern suite available now. Contact Paul T. Kirner at (440) 884-4300.
- **Seven Hills** – Law office for lease – Broadview Road just north of Pleasant Valley Road. Busy intersection. Not far from I-77. 3,000 square feet, move-in-ready, immediate occupancy. Reasonable rent. Contact Michael Kulick at (440) 503-9685 or staff@kulickdds.com to schedule a visit.
- **Seven Hills** – Law office for rent – Rockside Road, Seven Hills Corner office in prime location with Internet, copy, fax, scanner, telephone, receptionist. Two conference rooms, $1,000 per month. Call Anthony at (216) 401-7763.

### Suburbs – West

- **Avon** – New office space with multiple professionals. Great for networking. Desirable location across from Avon Commons on Detroit Road. Many included amenities. Contact Doug; (440) 937-1551.
- **Avon** – Office space – One newly furnished office in attractive two attorney suite with conference room and reception area. Historic building. Excellent location with free parking. Please contact mscroth@mcsroth-law.com for details.
- **Fairview Park Office Space** – Beautifully remodeled. Many amenities included. As low as $475 per month. Call (440) 895-1234 to schedule a visit.
- **Lakewood** – Furnished office available in nicely decorated suite. $500/month includes office, WiFi, utilities, conference room and free parking. (216) 246-1392.
- **Lakewood** – Office space in a newly updated modern suite available. First floor; library, Internet, copy, fax, scanner, receptionist. Call: Skip Lazzaro (216) 226-8241.
- **Westlake** – One/Two offices in Gemini Towers across from Crocker Park; includes phones, fax, copier, wi-fi, receptionist, conference room. Call (440) 250-1800 to schedule a visit.
- **Sheffield Village** – Law office for rent in prime location near I-90, has ample parking and handicap accessibility. Furniture is available for sale. Call (440) 503-9090.
For Rent

Lake Erie Rental – Upscale 2 bedroom/2 bath house on Lake Erie in Willowick. Beautifully furnished, wifi and air conditioning, fire pit and patio. Rent for getaway weekend or week. (440) 725-1224

Services


Careplan Geriatric Care Managers, Inc. – Providing in-home assessments, coordination of care, advocacy and assistance with placement outside of the home. Short term consultation and ongoing monitoring. Phone: 440-476-9534 www.careplangcm.com

Certified Divorce Financial Analyst – Financial Affidavit, Budget, Cash Flow Projections, Executive Compensation Valuation, Separate Property Tracing, etc. Contact Leah Hadley, CDFA, MAFF at (866) 545-1001; leah@greatlakesdfs.com.

Investment Real Estate – Premier Development Partners – Looking to acquire industrial/office sale and lease back or excess corporate real estate. Contact Brian Lenahan (216) 469-6423 or brian@premierdevelop.com

Experienced Attorney willing to co-counsel cases in Cleveland and all municipal courts – Contact Joe at (216) 363-6050.


Experienced Process Server – Super competitive prices – flat rate $50/address within Cuyahoga County. First attempt within 24 hours. Pente Legal Solutions (216) 548-7608 or lisa.vaccariello@pentellc.com

MarcoAuction.com – Court: Estate and Probate, Divorce, Power of Attorney; Real Estate: Residential and Commercial; Appraisals: Insurance, Jewelry and Antiques; and Chattel Items: Farming equipment – Marco Marinucci, Auctioneer – (440) 487-1878 or RealEstateAuctions39@yahoo.com

Security Expert – Tom Lekan – tlekan@gmail.com – (440) 223-5730

Trial Attorney – Experienced trial attorney in business litigation, personal injury, and complex family law. (25+ trials). Federal and State. stephen@neebittinger.com; (440) 782-7825.

Video Conference, Deposition Facility – Plaza West Conference Center, Rocky River offers conferencing and remote video, “smart” whiteboard conference facilities for 5–33 participants. plazawestcc.com (440) 333-5484.

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Samuel A. Meadows.


Ulmer & Berne LLP is proud to announce that Adrian D. Thompson has been named partner-in-charge of Taft’s Cleveland office.

Walter J. Haverfeld is pleased to welcome Jessica Trivisonno to the firm as an associate in its Public Law practice group.

Reminger Co., LPA is pleased to announce the following attorneys have joined their office: Daniel Egger, Timothy J. Gallagher, Sarah M. Mancuso, and Samuel A. Meadows.

Weltman, Weinberg & Reis Co., LPA, welcomes attorney Roy J. Schechter to its Cleveland office.


Howard Mishkind of Mishkind Kulwicki Law Co., LPA in Beachwood has been selected by his peers to be included in the 2018 edition of The Best Lawyers in America in the areas of Medical Malpractice Law – Plaintiffs, Personal Injury Litigation – Plaintiffs and Professional Malpractice Law. Howard has been recognized since 2006 (13 years) as an Ohio Super Lawyer and has been selected to the Top 100 list in Ohio for 2018.

The law firm of Thrasher, Dinsmore & Dolan would like to congratulate John R. Liber, Ezio E. Listati, Leo M. Spellacy, Mary Jane Trapp, and Laura M. Wellen (Rising Star) for inclusion in the 2018 Ohio Super Lawyers List.

Donald Campbell Bulea was named a 2018 Ohio Lawyers Rising Star in the area of Employment Litigation: Defense.


Judge Eileen A. Gallagher was unanimously elected by her colleagues to serve as the Administrative Judge of the Ohio Court of Appeals, Eighth District in 2018.

On March 13, 2018, Peggy Foley Jones will be speaking on the topic of “Mediation Demonstration: Sustaining Core Values in High Stake Mediation,” at the Supreme Court of Ohio’s 2018 Dispute Resolution Conference.

At the 12th Annual Leadership Development and Training Institute & Awards Luncheon on Thursday, November 2, 2017, Diane Citrino spoke on the topic: “Sexual Harassment in the Workplace: From Myth to an Everyday Reality.”

Something To Share?

Send brief member news and notices for the Briefcase to Jackie Baraona at jbaraona@clemetrobar.org. Please send announcements by the 1st of the month prior to publication to guarantee inclusion.
The 11th Annual Meeting:

CLEVELAND MARRIOTT DOWNTOWN AT KEY CENTER

JUN 01, 2018

Doors open at 11:00 a.m | Lunch at 12:00 (sharp)