PUBLICATION UPDATE

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HIGHLIGHTS

COVID-19 Litigation

- Recent cases litigating business interruption coverage due to COVID-19 closures are discussed in Chapter 1. See § 1.08; see also Chs. 42, 46 for detailed discussion.

Chapter 1

- New discussion and cases on reducing moral hazard in the contexts of surety arrangements and settlement negotiations (§ 1.01[4][b])
- Split in authority as to whether a state statute prohibiting arbitration agreements in insurance coverage disputes preempts a treaty governing arbitration agreements between foreign nationals and United States citizens (§ 1.03[4][a])
- New discussion and cases on accidents not needing to be fortuitous in order to be covered by insurance (§ 1.05[2][a])
- New cases across the nation on what constitutes "insurable interest" and whether STOLI arrangements are voidable or void *ab initio* (§ 1.05[3])
- New discussion on whether losses due to the effects of the COVID-19 pandemic are covered by business interruption insurance (§ 1.08[2][c])
- New section on the conse-

quences of the expired risk corridors provision of the Affordable Care Act (ACA) (§ 1.10[6])

- New section on Short-term Limited Duration Insurance (§ 1.10[7])
- New section on the ACA and invidious discrimination (§ 1.10[8])
- New section on available damages under the ACA (§ 1.10[9])

Chapter 2

- New discussions of Restatement (Second) and (Third) on Agency and how they relate to insurance intermediaries (§ 2.03[3][a] and [b])
- New cases and expanded discussion on how principals effectively and ineffectively limit their agents' authority (§ 2.03[3][d])
- New cases and expanded discussion on circumstances in which a broker can be both an agent of an insurer and an insured (§ 2.03[7])
- New cases on how the presumption of an at-will agency contract can be rebutted (§ 2.04)
- New discussion on sufficiency of pleadings sufficient to state a claim for fraudulent misrepresentation or omission (§ 2.05[2][d][ii])
- New discussion on a third party's ability to recover in tort for the failure of an insurance agent to perform his or her duty to obtain an insurance policy (§ 2.05[3][e])
- New cases and expanded discussion on exceptions to the no duty to advise rule (§ 2.05[5][c])
- New discussion on admissibility of expert testimony (§ 2.08[1])

Chapter 3

- New section on the legality of telemarketing solicitations of insurance (§ 3.01[1][a][ii])
- New section on split of authority as to whether an insurer can be estopped from denying coverage to a certificate of insurance holder where the certificate purports to extend additional insured coverage (§ 3.03A[3][b][i])
- New section on cases where plaintiffs denied coverage seemingly provided by certificates of insurance alleged insurers beached their contracts of insurance (§ 3.03A[3][d])

Chapter 4

- Expanded analysis of circumstances under which adjusters engaged by insurers may be liable to claimants (§ 4.03[4][b])
- Expanded discussions of availability in state after

state of punitive damages and damages for infliction of emotional distress for violations of claim-handling obligations (§ 4.07[4][d][ii] and [iii])

Chapter 5

- Enhanced analyses of when there is ambiguity in an insurance policy (§ 5.02[2][a])
- New section on distinction between the stare decisis effect of a policy interpretation based on law and based on fact (§ 5.04[3][a][v])
- Extended discussion of quasi-estoppel doctrines (§ 5.07[3])

Chapter 6

- Expanded discussion of choice of law issues involving group insurance, analyzing several new court decisions (§ 6.02[1][d])
- New state-by-state analysis of jurisdictions that apply the *lex loci contractus* doctrine to choice of law issues (§ 6.02[2][a])

Chapter 7

- New discussions of recent divergent court decisions on whether an enforceable arbitration agreement exists where there are conflicting arbitration provisions (§ 7.03[2][a])
- New section on arbitration procedures (§ 7.03[8])
- New section on enforcement of settlements reached in mediation (§ 7.04[4])
- Complete list of state statutes suppling right to declaratory relief in state courts (§ 7.05[2][d])
- Enhanced section on discretion to consolidate underlying case and coverage suit (§ 7.05[4][b])
- Enhanced discussion on combining breach of contract and declaratory relief claims (§ 7.06[1])
- New discussions on statutes of limitations for breach by failing to procure adequate insurance (§ 7.06[2])
- New section on when claim accrues and statute of limitations begins to run on breach of duty to Indemnify (§ 7.05[5][b])
- Enhanced discussion of prejudgment interest (§ 7.06[6][e])
- Enhanced analysis of amount in controversy (§ 7.07[1][a][ii])
- Revised section on federal bankruptcy actions as another basis for federal jurisdiction of insurance disputes (§ 7.07[1][b][i])
- Enhanced discussion of "Service of Suit" clauses (§ 7.07[2][b])

Chapter 16—In *Topp's Mechanical, Inc. v. Kinsale Insurance Co.*, 968 F.3d 854, 855 (8th Cir. 2020) (applying Nebraska law), an insurer

properly disclaimed coverage under a liability insurance policy for a pollution incident, when the policy excluded coverage for pollution incidents, unless properly reported by the insured, who alleged waiver and estoppel because it did not timely file a claim as the insurer told it to withhold reporting a claim until a formal demand was made or a lawsuit was filed, but estoppel and waiver was inapplicable here because it would have expanded coverage or the scope of the policy. (*See* § 16.03[3][c][iv][A].)

In *William Powell Co. v. OneBeacon Insurance Co.*, 2020-Ohio-5325, P1 (Ct. App.), an excess insurer was entitled to restitution for the money paid out under the policy with a reservation of right and did not waive its claim to the settlement funds it paid out because a primary policy that was scheduled underlying insurance to the excess policy still had collectible funds, and, therefore, the excess insurer was not liable for the amount it paid out in the first place. (*See* § 16.03[3][f].)

In *Dan Ryan Builders W. Va., LLC v. Main St. American Assurance Co.*, 452 F. Supp. 3d 374, 379 (D.S.C. 2020) (applying South Carolina law), the defendant insurer was not entitled to summary judgment on the plaintiff's duty to defend claim because the plaintiff had presented evidence that a valid written contract between it and its subcontractor existed that would extend additional insured coverage to the plaintiff under the Cincinnati Policy. (*See* § 16.05[1][c][i].)

In *Westfield Insurance Co. v. Keeley Construction, Inc.*, 2020 IL App (1st) 191876, P1, because the subcontractor agreed in the subcontract to name the general contractor and the property owner as additional insureds, they were covered by the plain terms of the CGL policy. (*See* § 16.05[1][c][i].)

In *Truck Insurance Exchange v. AMCO Insurance Co.*, 56 Cal. App. 5th 619, 619 (2020), because only a minimal causal connection was required to support a finding that commercial landlords' liability for injuries to a tenant's customers arose from the tenant's use of the premises, the landlords qualified as additional insureds under the tenant's insurance policy. (*See* § 16.05[1][c][i].)

In *Gonzalez v. Mid-Continent Casualty Co.*, 969 F.3d 554, 556 (5th Cir. 2020) (applying Texas law), an insurer had a duty to defend its insured under a CGL insurance policy because all three requirements of the policy's coverage provision had been satisfied as the petition in the underlying litigation plainly alleged physical injury to property that occurred within the policy period, and the exclusions to coverage did not apply. (*See* § 16.06[2][e][iii].)

In *Al Neyer, LLC v. Westfield Ins. Co.*, 2020 Ohio App. LEXIS 4304, at *1 (Ohio Ct. App. Nov. 25, 2020), the insured, a construction company, was not entitled to coverage for defense and indemnification of the underlying lawsuit because the CGL policy at issue included coverage for property damage caused by an "oc-

currence," but the insured's unauthorized demolition of a restaurant did not constitute an occurrence. (*See* § 16.07[3][a].)

In *T.H.E. Ins. Co. v. Glen*, 944 N.W.2d 655, 656 (Iowa 2020), a CGL insurance policy did not necessarily exclude a claim of gross negligence arising from a co-employee's failure to stop a moving belt when a worker fell, since that act could be an accident if done without intent to harm; expecting an injury was more likely than not, but was not highly likely. (*See* § 16.07[3][a].)

In *American Family Mutual Insurance Co. v. Mid-American Grain Distributors, LLC*, 958 F.3d 748, 750 (8th Cir. 2020) (applying Missouri law), an insurer had no duty to defend or indemnify an insured construction contractor because the contractor's alleged defective construction work was not an "accident" within the meaning of the CGL policy, and, as there was no "accident," there was no "occurrence" and no possibility of coverage. (*See* § 16.07[3][a].)

Chapter 16A—In *Progressive Northwestern Insurance Co. v. Gant*, 957 F.3d 1144, 1146 (10th Cir. 2020) (applying Kansas law), the court, citing the *Restatement of the Law of Liability Insurance LLI* § 12(2) and comment d, predicted that the Kansas Supreme Court would apply the following test: An insurer is subject to liability for the harm caused by the negligent act or omission of counsel provided by the insurer to defend a legal action when the insurer directs the conduct of the counsel with respect to the negligent act or omission *in a manner that overrides the duty of the counsel to exercise independent professional judgment*. (*See* § 16A.02[4].)

In *Interstate Fire & Casualty Insurance Co. v. First Specialty Insurance Co.*, 2020 U.S. Dist. LEXIS 158229, at *25 (E.D. Cal. Aug. 31, 2020) (applying California and Nevada law), a case arising out of 15 underlying construction defect actions in Nevada and California involving subcontractors insured by CGL policies issued by two insurers, because the Chapter 40 Notice of Defects was attached to the homeowners' complaint, and was comparable to a pleading itself, one of the insurers properly considered the Notice in evaluating whether it had a duty to defend under Nevada law. (*See* §§ 16A.02[5], 16A.03[2][c].)

Chapter 17—In *Gonzalez v. Mid-Continent Casualty Co.*, 969 F.3d 554, 556 (5th Cir. 2020) (applying Texas law), an insurer had a duty to defend its insured under a CGL insurance policy because all three requirements of the policy's coverage provision had been satisfied as the petition in the underlying litigation plainly alleged physical injury to property that occurred within the policy period, and the exclusions to coverage did not apply. (*See* § 17.01[2][a].)

In *Farmers Insurance Exchange v. Wessel*, 402 Mont. 348, 350 (2020), the district court correctly awarded summary judgment to the insurer on

the issue of the insurer's duty to defend under a homeowner's insurance policy because the underlying cases against the insureds alleged the insureds intended both their actions and the ensuing consequences, and, as the insureds' conduct was not accidental, there was no "occurrence" under the policy that would trigger coverage. (*See* § 17.01[2][a].)

In *Marculetiu v. Safety Insurance Co.*, 98 Mass. App. Ct. 553, 554 (2020), *appeal denied*, 2020 Mass. LEXIS 746 (Mass. Nov. 20, 2020), a declaratory judgment action brought by a dance instructor against the insurer of his dance academy under a CGL policy, the insurer had no duty to defend a dancer's tort action against the instructor for rape, because the CGL policy covered only those actions that were within the scope of the instructor's employment or taken while he performed duties related to academy business. (*See* § 17.01[2][a].)

Chapter 18—In *American Family Mutual Insurance Co. v. Mid-American Grain Distributors, LLC*, 958 F.3d 748, 750 (8th Cir. 2020) (applying Missouri law), an insurer had no duty to defend or indemnify an insured construction contractor because the contractor's alleged defective construction work was not an "accident" within the meaning of the CGL policy, and, as there was no "accident," there was no "occurrence" and no possibility of coverage. (*See* § 18.02[6][d].)

In *Nautilus Insurance Co. v. RMB Enterprises*, 2020 U.S. Dist. LEXIS 200468, at *1 (D. Haw. Oct. 28, 2020) (applying Hawaii law), the insured was not entitled to coverage under the insurance policies and the insurance company had no duty to indemnify or defend the insured because the assertion of faulty workmanship was not an "occurrence" within the meaning of the insurance policies since the insured caused property damage to its own work. (*See* § 18.02[6][d].)

In *Mid-Continent Casualty Co. v. Arpin & Sons, LLC*, 2020 U.S. App. LEXIS 24480, at *1 (11th Cir. Aug. 4, 2020) (applying Florida law), a general liability insurer was properly granted summary judgment in an action to determine its obligation to indemnify or defend a contractor because the contractor was a worker's statutory employer under Fla. Stat. § 440.10(1)(b), and, thus, the worker's injuries were excepted from coverage under the workers' compensation and employer's liability exclusions in policy. (*See* § 18.03[4], [5].)

Chapter 19—In *West American Insurance Co. v. MVP Holdings, LLC*, 2020 U.S. Dist. LEXIS 217037, at *7 (D. Mont. Nov. 19, 2020), a coverage dispute arising out of a lawsuit concerning a construction contract, the allegations against the insured did not fall within Coverage B for amounts the insured had to pay as a result of "personal or advertising injury," because the insured's counterclaim did not allege one of the enumerated offenses involving disparagement of the insured's goods,

products, or services and because of a breach of contract exclusion. (*See* §§ 19.02[7], 19.06[5][b].)

Chapter 20—In *Brillman v. New England Guaranty Insurance Co.*, 228 A.3d 636, 637 (Vt. 2020), the phrase "date of loss" in an insurance policy's one-year suit-limitation provision unambiguously meant the date of the occurrence giving rise to coverage. (*See* § 20.03[5][a].)

Chapter 21—In *Webb v. USAA Casualty Insurance Co.*, 457 P.3d 1258, 1262 (Wash. Ct. App. 2020), a case involving a homeowners' insurance policy, the insurer had a duty to defend the insureds for trespass and nuisance claims, because the trespass and nuisance allegations conceivably alleged a personal injury as defined in the insurer's personal injury endorsement, which replaced the standard liability insurance section and for which the insureds paid an additional premium. (*See* § 21.02[1][a].)

In *Westfield Insurance Co. v. Keeley Construction, Inc.*, 2020 IL App (1st) 191876, P1, P12, because the subcontractor agreed in the subcontract to name the general contractor and the property owner as additional insureds, they were covered by the plain terms of the CGL policy. (*See* § 21.02[1][a].)

In *Truck Insurance Exchange v. AMCO Insurance Co.*, 56 Cal. App. 5th 619, 619 (2020), because only a minimal causal connection was required to support a finding that commercial landlords' liability for injuries to a tenant's customers arose from the tenant's use of the premises, the landlords qualified as additional insureds under the tenant's insurance policy. (*See* § 21.02[1][c].)

In *Murphy Oil Corp. v. Liberty Mutual Fire Insurance Co.*, 955 F.3d 1110, 1112 (8th Cir. 2020) (applying Arkansas law), the district court properly ruled that there was no possibility that the CGL policy covered the property damage alleged in the complaint, and thus, there was no duty to defend because the contractual liability exclusion precluded any possibility of coverage for the underlying breach-of-contract claim, even though an endorsement expanded coverage for property damage on sold property. (*See* § 21.03.)

Chapter 22—In *Rossello v. Zurich American Insurance Co.*, 468 Md. 92, 95 (2020), the insurer was liable for the pro rata portion allocable to each of its four policy periods because the obligation to indemnify the insured under the circumstances of the case, which involved continuing asbestos bodily harm, was to be prorated based on the insurer's time on the risk. (*See* § 22.03[2].)

In *Zurich American Insurance Co. v. Certain Underwriters Subscribing to OEE Policy NRG 475535-9-2*, 2020 Tex. App. LEXIS 6907, at *1 (Tex. App. Aug. 27, 2020), the trial court erred in ruling that a wellsite operator's loss due to fire could not be allocated among three insurers as a matter of law and that the loss should therefore be shared on a pro-rata-by-limits basis. (*See* § 22.03[3].)

In *William Powell Co. v. OneBeacon Insurance Co.*, 2020-Ohio-5325,

P1 (Ct. App.), vertical exhaustion rather than horizontal exhaustion was consistent with the policy language because the excess insurers were only liable for an occurrence during the coverage period, and only when their respective attachment points were reached. (*See* § 22.06[2].)

In *Cont'l Cas. Co. v. Rohr, Inc.*, 2020 Conn. App. LEXIS 366, at*1 (Conn. Ct. App. Dec. 15, 2020), because an insured was required under California law to horizontally exhaust all primary insurance before the liability of its excess insurers could attach and because the primary insurer paid the insured more than the per occurrence limits of its policies, the exhaustion requirement with respect to the primary policies was satisfied. (*See* § 22.06[2].)

Chapter 41—In *Shelter Mutual Insurance Co. v. Lovelace*, 594 S.W.3d 84, 85 (Ark. 2020), an intentional act exclusion was not void as against public policy as applied to an innocent co-insured spouse, when the spouse's husband committed suicide by setting fire to their house, because the policy explicitly excluded coverage caused by an intentional act by "any insured." (*See* § 41.05[5].)

In *People's Trust Insurance Co. v. Ortega*, 306 So. 3d 280, 2020 Fla. App. LEXIS 8913, at *1 (Fla. Dist. Ct. App. June 24, 2020), the trial court erred in granting the insureds' motion to compel the parties to proceed with an appraisal as to the amount of damage suffered during a hurricane prior to holding an evidentiary hearing to determine whether the insureds had complied with their policy's post-loss obligations, including providing a sworn proof-of-loss statement with a detailed repair estimate. (*See* § 41.06[1].)

Chapter 42—In *Santo's Italian Café LLC v. Acuity Insurance Co.*, 2020 U.S. Dist. LEXIS 239382, at *1 (N.D. Ohio Dec. 21, 2020) (applying Ohio law), in which the complaint stemmed from losses the insured suffered as a result of the COVID-19 pandemic, the insured alleged that Closure Orders caused it to suffer substantial loss and to incur extra expense, but the insurer was entitled to dismissal as the insured failed to plead the threshold claim of direct physical loss of or damage to its insured premises. (*See* § 42.04[3].)

In *Boxed Foods Co., LLC v. California Capital Insurance Co.*, 2020 U.S. Dist. LEXIS 198859, at *1 (N.D. Cal. Oct. 26, 2020) (applying California law), the policy's virus exclusion excluded viruses as a covered cause of Loss, thereby precluding the insureds' claim for business income losses and extra expenses under the Civil Authority provision; further, under California law, COVID-19 was the efficient proximate cause of the insureds' losses. (*See* § 42.04[3].)

In *Elegant Massage, LLC v. State Farm Mutual Automobile Insurance Co*., 2020 U.S. Dist. LEXIS 231935, at *1 (E.D. Va. Dec. 9, 2020) (applying Virginia law), the court denied the motion to dismiss the insured's claims because the expansive anti-concurrent causation clause was not a

recognized or settled doctrine in the court's jurisdiction and the insurer failed to meet its burden to show that the virus exclusion clause applied to the insured's claim. (*See* § 42.04[3].)

Chapter 43—In *Shelter Mutual Insurance Co. v. Lovelace*, 594 S.W.3d 84, 85 (Ark. 2020), an intentional act exclusion was not void as against public policy as applied to an innocent co-insured spouse, when the spouse's husband committed suicide by setting fire to their house, because the policy explicitly excluded coverage caused by an intentional act by "any insured." (*See* § 43.02[1][c].)

In *4220 Kildare, LLC v. Regent Insurance Co*., 2020 Ill. App. LEXIS 683, at *1 (Ill. App. Ct. Sept. 30, 2020), the trial court should have denied the insurer's motion for a directed verdict and for JNOV when there was damage to the insured's property that was not barred by the earth movement exclusion in the all-risk policy; whether additional earth movement damage occurred would be of no consequence, since the insured had suffered a prior compensable loss. (*See* § 43.02[2][b].)

Chapter 44—In *Citizens Property Insurance Corp. v. Kings Creek South Condo, Inc*., 300 So. 3d 763, 764 (Fla. Dist. Ct. App. 2020), a case involving an insurance policy for the named perils of wind and hail for a condominium property, in which the insured sought coverage for nine roofs damaged by Hurricane Wilma, after the insured presented evidence of wind-related damage, the insurer had the right to challenge that evidence with evidence of non-wind related causes, such as faulty roof installation. (*See* § 44.02[2].)

In *Boxed Foods Co., LLC v. California Capital Insurance Co.*, 2020 U.S. Dist. LEXIS 198859, at *1 (N.D. Cal. Oct. 26, 2020) (applying California law), the policy's virus exclusion excluded viruses as a covered cause of Loss, thereby precluding the insureds' claim for business income losses and extra expenses under the Civil Authority provision; further, under California law, COVID-19 was the efficient proximate cause of the insureds' losses. (*See* § 44.03[11].)

In *Elegant Massage, LLC v. State Farm Mutual Automobile Insurance Co*., 2020 U.S. Dist. LEXIS 231935, at *1 (E.D. Va. Dec. 9, 2020) (applying Virginia law), the court denied the motion to dismiss the insured's claims because the expansive anti-concurrent causation clause was not a recognized or settled doctrine in the court's jurisdiction and the insurer failed to meet its burden to show that the virus exclusion clause applied to the insured's claim. (*See* § 44.04[1].)

In *In re* Covington Lodging Inc., 2021 Bankr. LEXIS 97, at *1 (Bankr. N.D. Ga. Jan. 15, 2021), in which a debtor sought insurance coverage for damage to a hotel from a water leak and sewer backup, summary judgment was not warranted on its breach of contract claim because there were genuine issues of material fact about whether the water pipe leak and the sewer backup resulted in separate damage or simultaneously contrib-

uted to the damage. (*See* § 44.04[6][a].)

Chapter 45—In *Kokhan v. Auto Club Insurance Co.*, 297 So. 3d 570, 571 (Fla. Dist. Ct. App. 2020), a breach of contract action filed by homeowners after their pool's drainpipe leak caused damage to their pool deck and surrounding structures, the circuit court erred in granting summary judgment for the insurer because the "water damage" exclusion's plain language did not apply to the claim. (*See* § 45.08[3][b][ii].)

In *Nelson v. Allstate Insurance Co.*, 228 A.3d 983, 984 (R.I. 2020), as the damage caused by a malfunctioning water heater was clearly not one of the hazards articulated in the subject insurance policy on the plaintiff's claim for breach of the insurance contract, the superior court properly granted summary judgment in favor of the insurance company. (*See* § 5.04[1][e][iii].)

In *4220 Kildare, LLC v. Regent Insurance Co*., 2020 Ill. App. LEXIS 683, at *1 (Ill. App. Ct. Sept. 30, 2020), the trial court should have denied the insurer's motion for a directed verdict and for JNOV when there was damage to the insured's property that was not barred by the earth movement exclusion in the all-risk policy; whether additional earth movement damage occurred would be of no consequence, since the insured had suffered a prior compensable loss. (*See* § 45.08[3][d][iii].)

Chapter 46—In *Santo's Italian Café LLC v. Acuity Insurance Co.*, 2020 U.S. Dist. LEXIS 239382, at *1 (N.D. Ohio Dec. 21, 2020) (applying Ohio law), in which the complaint stemmed from losses the insured suffered as a result of the COVID-19 pandemic, the insured alleged that Closure Orders caused it to suffer substantial loss and to incur extra expense, but the insurer was entitled to dismissal as the insured failed to plead the threshold claim of direct physical loss of or damage to its insured premises. (*See* § 46.05[4].)

In *Boxed Foods Co., LLC v. California Capital Insurance Co.*, 2020 U.S. Dist. LEXIS 198859, at *1 (N.D. Cal. Oct. 26, 2020) (applying California law), the policy's virus exclusion excluded viruses as a covered cause of Loss, thereby precluding the insureds' claim for business income losses and extra expenses under the Civil Authority provision; further, under California law, COVID-19 was the efficient proximate cause of the insureds' losses. (*See* § 46.05[4].)

In *Elegant Massage, LLC v. State Farm Mutual Automobile Insurance Co*., 2020 U.S. Dist. LEXIS 231935, at *1 (E.D. Va. Dec. 9, 2020) (applying Virginia law), the court denied the motion to dismiss the insured's claims because the expansive anti-concurrent causation clause was not a recognized or settled doctrine in the court's jurisdiction and the insurer failed to meet its burden to show that the virus exclusion clause applied to the insured's claim. (*See* § 46.05[4].)

In *XL Insurance America, Inc. v. Noranda Aluminum Holding C*orp., 239 A.3d 390, 392 (Del. 2020), a

dispute over a business-interruption insurance claim, the damages model of the insured's expert was consistent with the policy's gross earnings formula. (*See* § 46.08[3][a], [c][iii][E].)

In *Binghamton Precast & Supply Corp. v Liberty Mutual Fire Insurance Co.*, 122 N.Y.S.3d 734, 735 (N.Y. App. Div. 3d Dep't 2020), the insured was not entitled to summary judgment regarding the amount of damages under the business interruption policy because the policy contained a mitigation provision and the reasonableness of the insured's decision to make up for the lost production during its normal work hours rather than by scheduling overtime shifts on subsequent weekends presented factual issues to be resolved by a factfinder. (*See* § 46.08[4][a].)

Chapter 47—In *Estate of Munsterman v. Unitrin Auto & Home Ins. Co.*, 20-209 (La. App. 3 Cir. 11/18/2020), 2020 La. App. LEXIS 1682, at *1, because the authority in La. Rev. Stat. Ann. § 22:868(B) extended the time to assert a right of action against an insurer to two years, and invalidated the clause and condition in the policy at issue that limited the time to file a notice of loss to one year, the estate was entitled to coverage under the policy as its claim was filed within two years of the hail storm that caused damages. (*See* § 47.02[2].)

In *People's Trust Insurance Co. v. Ortega*, 306 So. 3d 280, 2020 Fla. App. LEXIS 8913, at *1 (Fla. Dist. Ct. App. June 24, 2020), the trial court erred in granting the insureds' motion to compel the parties to proceed with an appraisal as to the amount of damage suffered during a hurricane prior to holding an evidentiary hearing to determine whether the insureds had complied with their policy's post-loss obligations, including providing a sworn proof-of-loss statement with a detailed repair estimate. (*See* § 47.02[3].)

In *Accardi v. Hartford Underwriters Insurance Co.*, 838 S.E.2d 454, 455 (N.C. 2020), the terms of a homeowner's insurance policy were not ambiguous because the insurance policy unambiguously allowed for depreciation of the costs of labor and materials when calculating the actual cash value of the damaged property. (*See* § 47.04[2][a].)

In *Kurach v. Truck Insurance Exchange*, 235 A.3d 1106, 1107 (Pa. 2020), an insurer was permitted to withhold from any actual cash value payment the general contractor's overhead and profit (GCOP) as the policies specified that payment of the GCOP was conditional in that the payment would not be made unless and until the policyholders actually incurred the costs by commencing the repair process, and the policyholders did not undertake the repairs. (*See* § 47.05[1].)

Chapter 48—In *In re QBE Specialty Insurance Co.*, 2020 Tex. App. LEXIS 8275, at *1 (Tex. App. Oct. 20, 2020), involving a property insurance dispute, the parties had not reached an impasse because the insurer's denial of payment also asserted that it remained open to any

further information; at no point did both parties manifest the belief that further negotiations would be futile, and, therefore, the insurer did not waive its right to invoke the appraisal clause. (*See* § 48.03[1][b].)

In *Fortune v. First Protective Insurance Co.*, 302 So. 3d 485, 487 (Fla. Dist. Ct. App. 2020), a bad-faith action, the insurer's invocation of the appraisal process and payment of the appraisal award after the cure period expired did not cure, as a matter of law, an alleged violation for failing to attempt to settle claims in good faith. (*See* § 48.06[2][d].)

Chapter 49—In *Erie Insurance Exchange v. Alba*, 842 S.E.2d 195, 196 (Va. 2020), a condominium association's insurance provider did not waive subrogation against the tenant of an individual unit owner when the tenant was not a named or additional insured because the provider did not waive subrogation in regard to anyone other than the association and the individual unit owners. (*See* §§ 49.02[2][c], 49.07[2]).

In *Pulte Home Corp. v. CBR Electric, Inc.*, 263 Cal. Rptr. 3d 814 (Cal. Ct. App. 2020), the trial court erred in denying a general liability insurer's claim for equitable subrogation, which alleged that subcontractors had breached their contractual duty to defend the general contractor in construction defect actions; subrogation would not be unfair in shifting only each subcontractor's equitable share of costs, not the entire amount. (*See* § 49.02[3][b].)

In *City of Asbury Park v. Star Insurance Co.*, 233 A.3d 400, 401 (N.J. 2020), the court answered a certified question from the Third Circuit regarding subrogation, finding that, under equitable principles of New Jersey law, the made-whole doctrine does not apply to first-dollar risk, such as a self-insured retention or deductible, that is allocated to an insured under an insurance policy. (*See* § 49.04[2].)

In *Liberty Mutual Fire Insurance Co. v. Fowlkes Plumbing, L.L.C.*, 290 So. 3d 1257, 1258 (Miss. 2020), based on the plain meaning of the contract language, the waiver of subrogation applied to work and nonwork property because "waiver of subrogation" operated as a blanket waiver of property damage to the extent the property was covered by insurance. (*See* § 49.07[2].)

Chapter 50—In *Starr Surplus Lines Ins. Co. v. Bernhard MCC, L.L.C.*, 2020-78 (La. App. 5 Cir. 12/02/20), 2020 La. App. LEXIS 1749, at *1, a case concerning insurance coverage for damages resulting from a construction-site accident, the mutual waiver of subrogation provisions found in the contract signed by the subrogor precluded the subrogees from bringing claims against the subcontractor for the recovery of damages caused by a risk of loss covered by the builder's risk policy. (*See* § 50.01[2][c].)

In *Downtown Lofts LIHTC LLLP v. Travelers Property Casualty Co.*, 2020 U.S. Dist. LEXIS 245103, at *10–11 (D. Colo. Dec. 31, 2020), a coverage dispute, in which the parties

agreed that the plaintiffs, as the general contractor's assignees, were additional named insureds (ANIs) under the builders risk policy, the plaintiffs were not entitled to coverage for "Soft Costs" incurred during a delay in the construction project, under the plain language of the policy. (*See* § 50.02[1][b].)

Chapter 51A—In *Chartis Property Casualty Co. v. Inganamort*, 953 F.3d 231, 232 (3d Cir. 2020), the insureds were properly denied coverage under a marine insurance all-risk policy for damage to their vessel from a partial submersion because they failed to meet their burden of proof to show that the loss was fortuitous as the record evidence did not support their claim that the loss was due to a heavy rainfall and there was no other indication of fortuity. (*See* §§ 51A.04[2], 51A.08.)

In *QBE Seguros v. Morales-Vázquez*, 2021 U.S. App. LEXIS 1399, at *1 (1st Cir. Jan. 19, 2021), when a yacht owner provided an incomplete accident history on his marine insurance application (including an omission of his grounding of a 40-foot vessel), the marine insurance company was entitled to void the policy because the doctrine of uberrimae fidei applied since the earlier non-disclosure was material to the insurance policy contract. (*See* § 51A.05[2].)

In *Quintero v. Geico Marine Insurance Co.*, 983 F.3d 1264 (11th Cir. 2020), in an action involving a marine insurance policy insuring a boat owned by the insured, the insured's misrepresentation that he was in possession of boat voided his policy ab initio as no prudent insurer would accept risk of insuring stolen property no longer in insured's possession. (*See* § 51A.05[2].)

Chapter 52—In *Murray v. UPS Capital Insurance Agency, Inc.*, 269 Cal. Rptr. 3d 93, 95 (Cal. Ct. App. 2020), an action arising from the denial of coverage for used computer equipment damaged in shipping, there was a triable issue as to whether the insurer held itself out as having expertise in marine inland insurance, thus assuming a special duty to advise, in part because the insurer was a subsidiary of the shipping company and the policy was not understandable. (*See* § 52.01[1][b].)

In *NextSun Energy Littleton, LLC v. Acadia Insurance Co.*, 2020 U.S. Dist. LEXIS 179965, at *1 (D. Mass. Sept. 30, 2020) (applying Massachusetts law), coverage under a commercial inland marine insurance policy for the lost energy-generating income of all of the insured's solar panels was extended for the increased time of interruption caused by the government's red-tag order as the "not in force at the time of loss" clause in the policy exclusion did not bar the claim since the underlying laws authorizing the red-tag order were in force at the time of fire. (*See* § 52.02[2].)

Chapter 53—In *People's Trust Insurance Co. v. Ortega*, 2020 Fla. App. LEXIS 8913, at *1 (Fla. Dist. Ct. App. June 24, 2020), the trial court erred in ordering an insurer and insureds to proceed with an appraisal

as to the amount of damage suffered during a hurricane prior to holding an evidentiary hearing to determine whether the insureds had complied with their policy's post-loss obligations, including providing a sworn proof-of-loss statement. (*See* § 53.01[9][e].)

In *Accardi v. Hartford Underwriters Insurance Co.*, 838 S.E.2d 454, 455 (N.C. 2020), the terms of a homeowner's insurance policy were not ambiguous because the insurance policy unambiguously allowed for depreciation of the costs of labor and materials when calculating the actual cash value of the damaged property. (*See* § 53.05[3][b].)

In *Kurach v. Truck Insurance Exchange*, 235 A.3d 1106, 1107 (Pa. 2020), an insurer was permitted to withhold from any actual cash value payment the general contractor's overhead and profit (GCOP) as the policies specified that payment of the GCOP was conditional in that the payment would not be made unless and until the policyholders actually incurred the costs by commencing the repair process, and the policyholders did not undertake the repairs. (*See* § 53.05[3][c][iii].)

In *Green Mountain Insurance Co., Inc. v. Wakelin*, 484 Mass. 222, 223 (Mass. 2020), in which four people died as a result of the improper use of a portable generator in an uninsured cabin owned by the insured, the policy exclusion for bodily injury "arising out of a premises" owned by the insured but not insured under the policy did not apply because the portable generator did not constitute a condition of the insured's uninsured property and, thus, the accident caused by the generator did not trigger the uninsured premises exclusion. (*See* § 53.06[1][d].)

In *Scalzo v. Central Co-operative Insurance Co.*, 128 N.Y.S.3d 759, 761 (N.Y. App. Div. 4th Dep't Aug. 20, 2020), the insurer established that the policy exclusion for intentional actions applied and, therefore, the insurer had no duty to defend or indemnify the insured, who punched his neighbor because, inter alia, the complaint in the underlying action did not contain sufficient allegations of negligence to avoid the policy exclusion. (*See* § 53.06[2][b][i].)

In *Dorchester Mutual Insurance Co. v. Krusell*, 150 N.E.3d 731, 734 (Mass. 2020), a case regarding whether a homeowners' insurance policy required the insurer to indemnify the insureds in a personal injury suit related to their son's conduct, the exclusion precluding coverage for bodily injury arising out of physical abuse did not apply when the son pushed another during a conversation on a public sidewalk, causing him to fall and sustain serious injuries. (*See* § 53.06[2][b][ii].)

Chapter 54—In *Melamed v. First American Title Insurance Co.*, 2021 N.Y. App. Div. LEXIS 207, at *1 (N.Y. App. Div. 2d Dep't Jan. 13, 2021), the trial court correctly determined that a title insurer was not required to defend and indemnify the insureds in the underlying action because the subject title insurance

policy included an exception for claims arising from the rights of persons in possession, and the underlying claim for possession of a portion of the insured property by adverse possession was a claim arising from the rights of persons in possession. (*See* § 54.04[5][c].)

In *RCN Capital, LLC v. Chicago Title Insurance Co*., 230 A.3d 740, 741 (Conn. Ct. App. 2020), the trial court properly calculated the insured's damages under a title insurance policy because the sale of the property, after satisfaction of the tax lien and foreclosure expenses, resulted in $108,000, which the superior lienholder received, and, but for the superior mortgage, the insured would have received $108,000, and, thus, the insured sustained an actual loss of $108,000. (*See* § 54.05[2].)

Chapter 55—In *501 East 51st St. v. Kookmin Best Insurance Co., Ltd.*, 47 Cal. App. 5th 924, 924 (2020), there was no material dispute as to whether the insurer denied the insured's claim in good faith based on an expert report concluding the damage to the insured's building was not caused by a broken water main, as there was no evidence that the final expert report was contrived or false. (*See* § 55.04[2][c][i].)

Chapter 56—In *Elbert v. USDA*, 2020 U.S. Dist. LEXIS 152130, at *1–2 (D. Minn. Aug. 21, 2020), kidney-bean farmers were unable to collect under a revenue insurance policy designed to protect against a fall in bean prices, because there were not enough published pricing data to establish a harvest price, and the farmers were consequently left with only yield protection, which offered no relief for the drop in market price. (*See* § 56.05[2].)

In *Owen v. Federal Crop Insurance Corp.*, 2020 U.S. Dist. LEXIS 185883, at *10–13 (S.D. Tex. July 27, 2020), *adopted*, 2020 U.S. Dist. LEXIS 184928 (S.D. Tex. Oct. 6, 2020), the RMA acted arbitrarily and capriciously, and not in accordance with the law, in determining that a farmer did not use good farming practices in the production of his 2017 organic cotton crop, as the federal regulations do not require a farmer to show both that organic experts approve the production methods and compliance with an organic plan. (*See* § 56.05[4].)

Chapter 57—In *Yaniz v. Wright National Flood Insurance Co.*, 446 F. Supp. 3d 1015, 1017 (S.D. Fla. Mar. 4, 2020), an insurer did not fail to pay for flood damage to a residence under a standard flood insurance policy, because the evidence showed that structural damage to the foundation was not caused by flooding from a hurricane but, instead, by land subsidence within an earth movement exclusion. (*See* § 57.13[3].)

Chapter 61—In *Boyle v. Bristol W. Ins. Co*., 2020 Colo. App. LEXIS 1260 (July 2, 2020), an injured passenger's use of a vehicle was not one that was contemplated by the policy because he stepped out of the vehicle to approach the occupant of the other vehicle involved in a road rage incident. His injuries did not arise out of

the use of the vehicle because he voluntarily left the vehicle for a purpose that was not inherent to transportation and was not avoiding imminent injury.

Missouri does not require underinsured motorist (UIM) coverage and thus, the existence of the coverage and its ability to be stacked are determined by the contract entered between the insured and the insurer. If the policy language is ambiguous as to stacking, it must be construed against the insurer and stacking will be allowed. In *Johnson v. Safeco Ins. Co.,* 983 F.3d 323 (8th Cir. 2020), the anti-stacking provision did not preclude excess coverage from ever applying—it simply prevented the insured from stacking coverage from different policies when she has already received the highest applicable limit of UIM coverage.

In *Meemic Ins. Co. v. Fortson,* 2020 Mich. LEXIS 1355, a contractual anti-fraud provision was invalid and unenforceable because it was not based on a statutory or common-law defense. The insurer sought to enforce a sweeping anti-fraud provision against the claim made by the son, who was neither a party to the insurance contract nor a beneficiary of the claim allegedly obtained by fraud.

In *Williams v. Farm Bureau Mut. Ins. Co.,* 2021 Mich. App. LEXIS 646, citing *Meemic Ins. Co. v. Fortson,* 2020 Mich. LEXIS 1355, the insurer was not permitted to deny a claim for personal protection insurance (PIP) benefits based on post-procurement fraud because antifraud provisions in no-fault policies apply to fraud in the inducement.

Chapter 62—Effective October 1, 2020, in Maryland, an insured is entitled to recover property damage, including loss of use of the insured vehicle, resulting from the operation of an uninsured vehicle. Md. Ins. Code Ann. § 19-509(c)(2).

The court in *Berry v. Queen,* 469 Md. 674 (2020) held that insurers were required to reimburse loss of use damages, such as rental car costs, caused by an uninsured driver as damage to property within the scope of uninsured motorist (UM) coverage because the ordinary and popular meaning of the words "damage" and "property" connoted loss of use of an object and this interpretation was consistent with Maryland's case law and with the remedial purpose of mandatory UM coverage.

The plaintiffs in *Cody v. Allstate Fire & Cas. Ins. Co.,* 2021 U.S. Dist. LEXIS 20406 (N.D. Tex. 2021) alleged that the defendants breached the policy by not using the comparable sales approach in determining market value. The breach of contract claim was not viable as a matter of law because there was no policy language requiring comparable sales as the measurement of actual cash value or market value and Texas law does not mandate this method in calculating actual cash value.

The proper measure of compensatory damages in a tort action based on damage to real property is the difference between the fair market value of the property immediately before the

damage and the fair market value immediately after the damage. Although mathematical certainty is not required, a jury cannot be left to speculate as to the amount of damages. *Leftwich v. Brewster,* 306 So. 3d 26 (Ala. 2020).

Chapter 63—Even if punitive damages for theft are payable under uninsured motorist (UM) coverage, the federal court concluded that punitive damage were not available in *Dockery v. Allstate Ins. Co.,* 431 F. Supp. 3d 1307 (D. N.M. 2020) because the tortfeasors were unknown and could not be held culpable for their conduct. The purpose of punitive damages is to punish the tortfeasor and deter others from committing similar offenses.

In a collision involving a car and a motorized wheelchair that was traveling on the road, the court held that the wheelchair passenger could not be classified as a "pedestrian" under Ala. Code § 32-1-1.1(42), which defined a pedestrian as a person afoot. The motorized wheelchair met the definition of "motor vehicle" in Ala. Code § 32-1-1.1 (86) because it was a self-propelled device by which the passenger could be transported upon a highway. *Pruitt v. Oliver,* 2021 Ala. LEXIS 9.

The policy in *W. Agric. Ins. Co. v. Arbab-Azzein,* 940 N.W.2d 865 (S.D. 2020) did not cover an accident's medical expenses because the insurer showed a "vehicle used for a fee" exclusion applied when the insured charged co-workers a flat fee to transport them to work. The exclusion for a "shared-expenses car pool" did not apply to liability coverage because the exception unambiguously included car pool arrangements where participants shared costs by taking turns driving or making some other contribution toward expenses.

Chapter 64—In *N.C. Farm Bur. Mut. Ins. Co. v. Martin,* 851 S.E.2d 891 (N.C. 2020), family members who lived in separate houses on a farm were not members of the same household.

In *Kellogg v. Mich. Millers Mut. Ins. Co.,* 2020 U.S. App. LEXIS 32123 (2d Cir. Oct. 9, 2020), the claimant, a tow truck operator, was injured when he was using the truck's winch cable to pull a vehicle out of a ditch, an activity plainly related to the vehicular nature of the insured automobile, and was struck by a third vehicle that had lost control. The claimant was "occupying" the covered tow truck within the meaning of the Auto Medical Payments and Supplementary Uninsured/ Underinsured Motorists (SUM) policies.

The Colorado Medical Payments statute bars interference with the Workers' Compensation no-fault scheme. The policy did not contain medical payments coverage under the facts of this case because the accident occurred during the course and scope of the plaintiff's employment and workers' compensation benefits were available to the plaintiff, thus causing coverage to be excluded under the terms of the policy. *Budnella v. USAA Gen. Indem. Co.,* 2021 U.S.

Dist. LEXIS 15811 (D. Colo. 2021).

In *Progressive Direct Ins. Co. v. Williams,* 2020 U.S. Dist. LEXIS 70544 (M.D. Ga. 2020), the liability or the medical payments policy does not provide liability coverage or medical payments coverage for claimant who was participating in a motocross training camp. The policy excluded coverage resulting from, or sustained during practice or preparation for: any riding activity conducted on a permanent or temporary racetrack, racecourse, or during any closed course event.

Chapter 65—Even where an insurer has violated the notice provisions of the supplemental uninsured/underinsured motorist (SUM) Statute and Regulation 35-D, these laws do not grant insureds a private right of action to seek reformation of the terms of an insurance policy that, by its plain terms, excludes SUM coverage. *Loomis v. Ace Am. Ins. Co.,* 2021 U.S. Dist. LEXIS 22084 (N.D. N.Y. 2021).

In *Turner v. State Farm Mut. Ins. Co.,* 2020 Ala. LEXIS 76, the underinsured motorist (UIM) insurer was entitled to summary judgment because the policy contained an unambiguous consent to settle provision, the insurer paid an advance and the insured unilaterally decided to release the tortfeasor and his insurer from all liability, thereby repudiating his policy. The court enforced the exclusionary aspects of the consent to settle provision. Thus, the insurer was discharged from its obligation to pay the insured UIM benefits.

In *Trilogy Plumbing Inc. v. Navigators Specialty Ins. Co.,* 50 Cal. App. 5th 920 (2020), the court rejected an insurer's attempt to use California's Anti-Strategic Lawsuit Against Public Participation (SLAPP) statute, *Cal. Code Civ. Proc. § 425.16*, in an insurance bad faith action.

The court in *Foraker v. USAA Cas. Ins. Co.,* 2020 U.S. Dist. LEXIS 68949 (D. Or. 2020) concluded that the insurer breached its implied covenant of good faith and fair dealing by failing to conduct a reasonable investigation of the insured's uninsured motorist (UM) claim.

The court in *Direct Auto. Ins. Co. v. Merx,* 2020 Ill. App. LEXIS 491 recognized the advantages of named insured coverage. A named insured is covered for uninsured motorist (UM) benefits even if not injured in a covered vehicle.

In *Walters v. De'Andrea,* 2020 Ala. LEXIS 79, the patrol officer failed to demonstrate that the motorcyclist's claims arose from a function that would have entitled her to state-agent immunity because she did not point to a single patrol duty she was actually performing at the time the accident occurred.

In *Nationwide Prop. & Cas. Ins. Co. v. Steward,* 2020 Ala. LEXIS 131, the trial court properly awarded summary judgment to an insured, who was injured as a passenger in an all-terrain vehicle (ATV) accident and sought uninsured motorist (UM) benefits, because the policies' term "public roads" was ambiguous,

which was resolved in the insured's favor.

Brill v. Mid-Century Ins. Co., 965 F.3d 656 (8th Cir. 2020), applying Wisconsin law involved a dispute over the amount an insurer owed to a claimant after her husband was struck and killed by an underinsured motor vehicle. The insurer issued the policy to the insureds when they resided in Wisconsin and the policy was not renewed after the husband's move to Minnesota. Thus, the add-on approach of Minnesota, Minn. Stat. § 65B.50, for calculating underinsured motorist coverage (UIM) was not required and the plain language of the policy controlled, which dictated Wisconsin's limits-less-paid approach to calculate UIM coverage. Wis. Stat. § 632.32.

In *Glover v. Allstate Prop. & Cas. Ins. Co.,* 153 N.E.3d 1114 (Ind. 2020), a case in which the decedent died in a car crash, the policy's anti-stacking provision barred aggregating policy limits for UIM coverage but did not bar multiple UIM recoveries under Ind. Code § 27-7-5-5. Valid anti-stacking provisions do not bar multiple UIM recoveries, they bar only multiple UIM recoveries from exceeding the aggregate UIM coverage maximum.

Chapter 66—In *Pinney v. Carrera,* 469 P.3d 970 (Utah 2020), the accident victim was entitled to the award of general damages because the phrase "based upon objective findings" in Utah Code § 31A-22-309 required only that findings regarding a permanent disability or impairment were based on externally verifiable phenomena, rather than on an individual's subjective perceptions or feelings regarding the injury.

In Utah, the serious injury threshold includes a bone fracture. Utah Code § 31A-22-309. Effective January 1, 2021.

In an insurance coverage dispute where the petitioner was riding his bicycle when the door of a vehicle opened right into him, the meaning of the policy term "pedestrian" was ambiguous as it was susceptible to more than one reasonable interpretation and therefore, the court was required to construe the insurance term favorably to the insured. The legislature has defined "pedestrian" for purposes of casualty insurance as a natural person not occupying a motor vehicle and, because the petitioner's bicycle did not contain a motor and thus was not a motor vehicle, he qualified as a "pedestrian" at the time of the accident under Wash. Rev. Code § 48.22.005(11). *McLaughlin v. Travelers Commercial Ins. Co.,* 196 Wn.2d 631 (2020).

In *Country-Wide Ins. Co. v. Rodriguez,* 2021 N.Y. Misc. LEXIS 91 (Sup. Ct. 2021), the insured's failure to appear for a requested examinations under oath (EUO) voided the insurance policy ab initio such that an insurer could retroactively deny claims regardless of whether the denials were timely issued. There was sufficient evidence to establish a rebuttable presumption of proper mailing of the EUO notice.

A New York Appellate Court af-

firmed a judgment dismissing an article 78 that sought a determination that the Insurance Superintendent's elimination of the minimum $60 fee makes it impossible for attorneys to receive reasonable compensation for low-value claims and the revised maximum $1,360 fee fails to account fully for inflation. The amended regulations were not contrary to the no-fault statute nor were they irrational. The no-fault statute expressly provides that an attorney's entitlement to reasonable fees for the services in question is subject to limitations promulgated by the Insurance Superintendent. *Matter of CIP Physical Therapy, P.C. v. Lawsky,* 133 N.Y.S.3d 35 (App. Div. 2020).

Chapter 67—In an underinsured motorist (UIM) coverage dispute over injuries sustained by a business owner while he was riding a motorcycle that he kept at his home, the policy covered his injuries. Although the policy endorsement had an "owned-vehicle" exclusion, the court found that the policy covered the motorcycle because it predicted that the North Carolina Supreme Court would rule that, if a motor vehicle policy gives an entity broader UIM coverage than that of a class II insured, that entity is necessarily a class I insured. The plaintiff had broader UIM coverage than a class II insured. *Vincent v. AMCO Ins. Co.,* 2020 U.S. App. LEXIS 24504 (5th Cir. 2020), applying North Carolina law.

In *Hurst v. Nationwide Mut. Ins. Co.,* 2020 U.S. App. LEXIS 17527 (10th Cir. 2020), applying Wyoming law, the policy issued to appellant law firm did not list appellant individual as a named insured and she was not otherwise occupying a vehicle covered by the policy at the time of the collision. The appellant was injured in a bicycle accident.

The court in *Gunderson v. Liberty Mut. Ins. Co.,* 2020 MT 197N correctly found a business auto policy was unambiguous and the plaintiffs did not qualify as "insureds" pursuant to the policy's plain language because the plaintiff, who was operating his personal motorcycle at the time of the accident, was neither the named insured nor operating a covered auto at the time of the accident. Montana law allows an insurer to limit coverage to a corporation or other business entity.

Chapter 68—In *Scottsdale Ins. Co. v. Kuntz*, 2020 U.S. Dist. LEXIS 227020 (M.D. Fla. 2020), the Garage Coverage Form assigned numeric symbols which describe various categories of "autos." The only relevant "autos" were those satisfying symbol 22 ("autos" owned by the insured) or symbol 29 ("autos" not owned by the insured but used in connection with its garage business). Considering the non-technical definition of land motor vehicle, it was apparent that the all-terrain vehicle (ATV) in this case was such a vehicle.

In *A & R Enters., Inc. v. Sentinel Ins. Co.,* 202 Conn. App. 224, 244 A.3d 660 (2021), the plaintiff auto repair shop sought to recover damages from the defendant insurer for

breach of a commercial automobile insurance policy in connection with the defendant's failure to pay the full cost of repairs that the plaintiff had made to a vehicle owned by the defendant's insured, which assigned its rights under the insurance policy to the plaintiff. Although the defendant refused to pay the full cost of repairs charged by the plaintiff, there was no evidence presented at trial that the defendant required the insured to use a specific person, and, in the absence of such evidence, the plaintiff's claim failed.

The plaintiff in *Exotic Motors v. Zurich Am. Ins. Co.,* 597 S.W.3d 767 (Mo. Ct. App. 2020) was a victim of a fraud. After paying a substantial sum to a third party to purchase an automobile, the plaintiff never received possession of the purchased automobile. The defendant insurer denied the plaintiff's claim under the policy on the grounds that the plaintiff never obtained possession of the car, and therefore the car was not an "acquired" vehicle under the policy.

Chapter 69—In *Cutrer v. TWT Transp., LLC,* 2020 U.S. Dist. LEXIS 164808 (M.D. La. 2020), the MCS-90 endorsement did not apply because the Freightliner was not being used for-hire to transport the property of a third party in interstate commerce.

Commercial motor vehicles are required to have liability insurance coverage containing an MCS-90 Endorsement. However, the regulations set forth a 10,001-pound minimum weight for something to be deemed a "commercial motor vehicle." United's ambulances weighed less than 10,001 pounds and the underlying the requirement for the MCS-90 Endorsement did not apply to them equally. *Markel Ins. Co. v. Rau,* 954 F.3d 1012 (7th Cir. 2020).

In *Fergin v. Westrock,* 955 F.3d 725 (8th Cir. 2020), a third-party employee's state tort claim was not preempted by Carmack Amendment. The Carmack Amendment is limited "to the person entitled to recover under the receipt or bill of lading" and liability that "is for the actual loss or injury to the property."

In *Indem. Ins. Co. of N.Am. v. Supplies E.G. Global Logistics,* 2021 U.S. Dist. LEXIS 15527 (S.D. Tex. 2021), the Carmack Amendment did not apply to a broker. Although freight forwarders and brokers can perform similar functions, but under the law, freight forwarders take possession of the goods and assume responsibility for transporting them to their destination.

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