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Insurance Law

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Insurance Law

Barry L. Kroll*
and John M. Edwards**

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I. INTRODUCTION

Insurance law evolved significantly during the *Survey* year. The issues addressed included commercial property and casualty insurers' duty to defend, the validity of exclusions in contribution actions, the definition of insurance, and the insurer's right to settle within its insured's deductible. In addition, the courts addressed several issues involving uninsured and underinsured motorist coverage. Finally, the legislature extended protection against arbitrary renewal and nonrenewal of policies to commercial property and casualty insureds.

II. THE INSURER'S DUTY TO DEFEND AND INDEMNIFY

A. Coverage Issues

1. Triggering Coverage in Toxic Tort Litigation

Asbestos tort claims raise complex problems of coverage and obligations to defend under commercial general liability policies. In *Zurich Insurance Co. v. Raymark Industries Inc.*,¹ the Illinois Supreme Court took the first steps toward clarifying these issues. The *Raymark* court held that insurance coverage is triggered by exposure to asbestos and by the manifestation of asbestos-related disease or sickness.² The court held also that insurers have no obligation to defend new and existing claims once settlements or judgments exhaust policy limits.³ Additionally, the court rejected pro rata allocation of defense and indemnity costs when an asbestos claim triggers more than one insurer's policy.⁴

In *Raymark*, the Zurich Insurance Company ("Zurich") filed a declaratory action to clarify its obligations and the obligations of other primary insurers to Raymark Industries ("Raymark") for the defense and indemnification of Raymark in thousands of underlying suits.⁵ These underlying suits involve personal injury or wrongful death actions arising from exposure to asbestos contained in products that Raymark manufactured from the 1940's through the 1960's.⁶ Zurich and the other insurers provided liability insur-

1. 118 Ill. 2d 23, 514 N.E.2d 150 (1987).

2. *Id.* at 47, 514 N.E.2d at 161. For an explanation of exposure and manifestation, see *infra* notes 15-23 and accompanying text.

3. *Id.* at 53, 56, 514 N.E.2d at 163, 165.

4. *Id.* at 57, 514 N.E.2d at 165.

5. *Id.* at 28, 32, 514 N.E.2d at 152, 154. Raymark is currently a defendant in over thirty thousand lawsuits pending in state and federal courts across the United States. *Id.* at 32, 514 N.E.2d at 154.

6. *Id.* at 32, 514 N.E.2d at 154.

ance to Raymark throughout this period.⁷

In addressing when the duty to defend is triggered, the Illinois Supreme Court agreed with the appellate court that the coverage provisions of the insurers' policies were virtually identical in their provision for "bodily injury . . . caused by an occurrence."⁸ The policies defined bodily injury as "bodily injury, sickness or disease."⁹ The supreme court agreed also with the lower courts that bodily injury, sickness, and disease are separate and distinct physical conditions. Each of these conditions alone might trigger coverage.¹⁰ Despite the common language, the litigants could not agree when asbestos-related injury occurred under the policies.¹¹ Zurich advocated the "exposure" theory,¹² the other insurers advocated the "manifestation" theory,¹³ and Raymark urged adoption of the "Keene" approach.¹⁴

Under the "exposure" theory, an insurer that provides coverage at the time the claimant is initially exposed to asbestos will be obligated to defend and indemnify the insured.¹⁵ The "manifestation" theory advocates contend that the manifestation of asbestos-related illness by a claimant should trigger coverage.¹⁶ The "Keene" theory¹⁷ would require all insurers, from the date of exposure to the

7. *Id.* at 32-33, 514 N.E.2d at 154. Commercial Union Insurance Company insured Raymark from May 1, 1941, through May 1, 1945, from February 4, 1947, through February 4, 1950, and from September 26, 1967, through October 15, 1969. The Federal Insurance Company insured Raymark from September 26, 1951, through September 26, 1967. Zurich insured Raymark after October 15, 1969. *Id.*

8. *Id.* at 43, 514 N.E.2d at 159.

9. *Id.* at 44, 514 N.E.2d at 159.

10. *Id.*

11. *Id.* at 33-34, 514 N.E.2d at 154-55.

12. *Id.* at 33, 38, 514 N.E.2d at 154, 156-57.

13. *Id.* at 39-41, 514 N.E.2d 157-58. Federal Insurance Company argued that coverage is triggered by asbestos-related disease that manifests itself during the policy period. Federal Insurance Company argued also, as did Commercial Union Insurance Company, that the duty to defend is determined by the physical injury for which the plaintiff seeks compensation. Coverage issues, therefore, should be determined on a case-by-case basis, according to the injury outlined in the complaint. If a plaintiff's complaint seeks recovery for asbestos diseases only, then, according to this approach, insurance policies providing coverage at the time of "exposure" would not be triggered. *Id.*

14. *Id.* at 34, 514 N.E.2d at 155. For further explanation, see *infra* note 17 and accompanying text.

15. *Id.* at 38, 514 N.E.2d at 156-57.

16. *Id.* at 39, 514 N.E.2d at 157.

17. *Id.* at 34, 514 N.E.2d at 155. This approach derives from the decision in *Keene Corp. v. Insurance Co. of North America*, 667 F.2d 1034 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 1067 (1983). The *Keene* court determined that coverage is triggered at the time of the claimant's initial exposure to asbestos and continues unabated until the manifestation of asbestos-related disease. *Id.*

point of manifestation, to defend and indemnify the insured.¹⁸

In analyzing these arguments, the court relied on the medical evidence in the record.¹⁹ The court determined that the medical evidence provided ample support for the conclusion that "bodily injury" occurs upon the inhalation of asbestos fibers.²⁰ The court then defined "disease" as a condition "that impairs the performance of a vital function."²¹ Based upon the medical evidence, the court agreed that "disease" occurs in cases of asbestos-related illness when it is reasonably capable of medical diagnosis.²² The court defined "sickness" as a "disordered, weakened or unsound condition" and held this to occur at an unspecified point before "disease."²³

Using this analysis, the court rejected all of the litigants' coverage theories.²⁴ The court held that insurers with policies in force when a claimant first was exposed to asbestos must defend Raymark for the claim.²⁵ Insurers that had policies in effect at the time when a claimant alleged either sickness or manifestation of the asbestos-related disease also must defend Raymark.²⁶

After resolving the triggering issue, the supreme court considered the extent to which Raymark's insurers were obliged to defend when settlements and judgments had exhausted the policy limits.²⁷ The court treated separately those policies providing coverage prior to September 26, 1967,²⁸ and those policies providing coverage after that date.²⁹ The introductory sentence of the pre-1967 policies provided that the policy coverage agreements are

18. *Raymark*, 118 Ill. 2d at 42, 514 N.E.2d at 159.

19. *Id.* at 35-37, 514 N.E.2d at 155-56.

20. *Id.* at 45, 514 N.E.2d at 160.

21. *Id.*

22. *Id.* at 46, 514 N.E.2d at 160.

23. *Id.* at 47, 514 N.E.2d at 161.

24. *Id.*

25. *Id.*

26. *Id.* In its decision, the supreme court expressly rejected the "Keene" approach. Raymark had urged that the manifest weight of the evidence indicated that bodily injury occurs from the time of exposure until the manifestation of asbestos-related disease. The supreme court disagreed, determining that the medical evidence was inconclusive regarding the progression of asbestos-related injury from the time of exposure until manifestation. *Id.*

27. *Id.* at 48-56, 514 N.E.2d at 161-65.

28. *Id.* at 48-53, 514 N.E.2d at 161-64. Commercial Union Insurance Company and the Federal Insurance Company issued policies during this time period. *Id.* at 32-33, 514 N.E.2d at 154. For the dates each insurer provided coverage see *supra* note 7.

29. *Id.* at 53-56, 514 N.E.2d at 164-65. Commercial Union Insurance Company and Zurich Insurance Company provided coverage after September 26, 1967. *Id.* at 32-33, 514 N.E.2d at 154. For the dates of coverage see *supra* note 7.

"subject to the limits of liability . . . and other terms of the policy."³⁰ The defense coverage portions of these policies provided: "as is afforded by this policy, the company shall: (a) defend any suit . . . and the amounts so incurred, except settlements of claims are payable by this company in addition to the applicable limit of liability of this policy."³¹

Raymark argued that the first sentence of these policies merely confined the duty to defend to the type of coverage provided.³² Raymark further urged that the last phrase of the defense agreement controlled the insurer's duty to defend.³³ According to Raymark, the amounts incurred in defense of coverage claims are payable "in addition to the applicable limit[s] of liability" and without monetary limitation.³⁴

The Illinois Supreme Court rejected Raymark's arguments and affirmed the appellate court's holding that the duty to defend does not continue on new and existing claims once the policy limits have been exhausted through judgments or settlements.³⁵ In so holding, the *Raymark* court agreed with the Georgia Supreme Court in *Liberty Mutual Insurance Co. v. Meade Corp.*,³⁶ that "[t]o be insured only as to type of coverage is no protection at all. Another dimension is involved, the *amount* of that coverage."³⁷ The *Raymark* court held that the first phrase of the pre-1967 policies limits the duty to defend to the amount and to the type of indemnity coverage.³⁸ The court held that the provision in the defense agreement

30. *Id.* at 48, 514 N.E.2d at 161.

31. *Id.* at 49, 514 N.E.2d at 161.

32. *Id.* at 50-51, 514 N.E.2d at 162.

33. *Id.* at 49, 514 N.E.2d at 162.

34. *Id.* at 50, 514 N.E.2d at 162. In support of this interpretation of the duty to defend, Raymark cited *Conway v. Country Cas. Ins. Co.*, 92 Ill. 2d 388, 394, 442 N.E.2d 245, 247 (1982), for the proposition that the duty to defend is independent of the duty to indemnify. As a result, Raymark contended there is no dependent relationship between the amount of indemnity obligation and an insurer's defense obligation. *Raymark*, 118 Ill. 2d at 52, 514 N.E.2d at 163.

Despite Raymark's reliance upon *Conway*, the decision was open to different interpretations. In *Conway*, the plaintiff's automobile liability insurer paid the policy limits to a motorist with whom the plaintiff had collided. The insurer's payment was not made pursuant to either a settlement agreement or judgment. *Conway*, 92 Ill. 2d at 391, 442 N.E.2d at 246. Although the *Conway* court stated that "an insurer's payment to its policy limits, without more, does not excuse it from its duty to defend," the court also noted the issue might be decided differently when the insurer made "payment pursuant to a judgment or a settlement agreement." *Id.* at 394-96, 442 N.E.2d at 247-48.

35. *Raymark*, 118 Ill. 2d at 53, 514 N.E.2d at 163.

36. 219 Ga. 6, 9, 131 S.E.2d 534, 536 (1963).

37. *Raymark*, 118 Ill. 2d at 51, 514 N.E.2d at 162-63 (quoting *Liberty Mutual*, 219 Ga. 6, 131 S.E.2d 534) (emphasis in original).

38. *Id.* at 51, 514 N.E.2d at 162.

stating that the amounts incurred in defense "are payable in addition to the applicable limits of liability," is a clarification indicating that defense costs shall not reduce the indemnity limits.³⁹ Finally, the court expressly rejected Raymark's interpretation of its insurers' duty to defend.⁴⁰ The court ruled that although the duty to defend is distinct from the duty to indemnify, they are not completely independent obligations.⁴¹ When the insurer might be obliged to indemnify, the insurer has a duty to defend. When the insurer has no potential obligation to indemnify, the insurer has no duty to defend.⁴²

In contrast to the pre-1967 policies, Zurich's post-1967 defense agreements provided that "the company shall not be obligated . . . to defend any suit after the applicable limit[s] of . . . liability [have] been exhausted. . . ."⁴³ The court held that once Zurich's liability limits are reached by judgments or settlements, it shall not be required to defend pending actions.⁴⁴ The supreme court reasoned that the post-1967 policy language is unambiguous insofar as it states that the insurer is not obligated to defend "any" suit upon exhaustion of the policy limits.⁴⁵ This, the court held, is an explicit manifestation of "the parties' intention to limit Zurich's obligation to defend all actions, including pending actions. . . ."⁴⁶

Finally, the *Raymark* court addressed whether the insurers should assume their obligations pro rata when a claim triggers coverage under more than one insurer's policy.⁴⁷ The supreme court refused to consider pro rata allocation according to each insurer's period of coverage in relation to the total period of exposure.⁴⁸ The court determined that pro rata allocation as adopted in *Insurance Co. of North America v. Forty-Eight Insulations, Inc.*,⁴⁹ is appropriate only in an exposure theory jurisdiction.⁵⁰ The court indicated that although pro rata allocation may be appropriate when exposure is the sole criteria for determining coverage, it may

39. *Id.* at 51, 514 N.E.2d at 163.

40. *Id.* at 52, 514 N.E.2d at 163.

41. *Id.*

42. *Id.*

43. *Id.* at 54, 514 N.E.2d at 164.

44. *Id.* at 56, 514 N.E.2d at 165.

45. *Id.* at 55-56, 514 N.E.2d at 165.

46. *Id.* at 56, 514 N.E.2d at 165.

47. *Id.* at 56-57, 514 N.E.2d at 165.

48. *Id.* at 57, 514 N.E.2d at 165.

49. 633 F.2d 1212 (6th Cir. 1980), *aff'd on rehearing*, 657 F.2d 814 (6th Cir. 1981), *cert. denied*, 454 U.S. 1109 (1981).

50. *Raymark*, 118 Ill. 2d at 57, 514 N.E.2d at 165.

be unworkable when either exposure or manifestation may trigger coverage.⁵¹

The *Raymark* opinion will have a significant impact on asbestos-related insurance litigation. More importantly, the opinion will effect liability insurance litigation in general. With regard to asbestos-related litigation, the supreme court has clearly established when asbestos related personal injury occurs,⁵² and rejected pro rata allocation of indemnity limits. In determining that the duty to defend terminates upon the exhaustion of indemnity limits, the supreme court has clarified the scope of the duty. This delineation of the insurer's duty to defend will have general application to all insurance litigation.

2. Professional Liability Insurance

During the *Survey* year, the Illinois Appellate Court for the First District twice interpreted occurrence language in professional liability policies. In *Harbor Insurance Co. v. Arthur Anderson & Co.*,⁵³ the court held that under the prior notice provision of a claims made policy,⁵⁴ notice of a cause of action within the policy period constitutes notice of all potential claims that may arise out of the same facts alleged in the first cause of action.⁵⁵ In *St. Paul Mercury Insurance Co. v. Statistical Tabulating Corp.*,⁵⁶ the court determined that under a prior errors provision,⁵⁷ an insurer may not deny coverage when the passage of time has diminished the foreseeability of a potential legal action arising from an insured's prior error.⁵⁸

In *Arthur Anderson*, several of Arthur Anderson's professional

51. *Id.*

52. Although the *Raymark* court stated that coverage will be triggered by exposure and manifestation to asbestos, this decision may not foreclose continued litigation of these issues. The gap between "exposure" and "manifestation" may lead to considerable factual disputes. See Zulkey & Bauer, *Insurance Law, 1985-86 Illinois Law Survey*, 18 Loy. U. Chi. L.J. 605, 610 (1986).

53. 149 Ill. App. 3d 235, 500 N.E.2d 707 (1st Dist. 1987), *cert. denied*, 113 Ill. 2d 574, 505 N.E.2d 353 (1987).

54. A claims made policy provides liability coverage for claims that are made during the policy period and for claims made after the policy period when notice has been provided to the insurer of either a claimant's intent to make a claim or of an occurrence that may give rise to a claim. *Id.* at 237-38, 500 N.E.2d at 709.

55. *Id.* at 241, 500 N.E.2d at 711.

56. 155 Ill. App. 3d 545, 508 N.E.2d 433 (1st Dist. 1987).

57. Prior error provisions provide coverage to insureds for occurrences before the commencement of the policy period when the insured has no knowledge of the prior error giving rise to the occurrence and had no reasonable way to know of the prior error as of the effective date of the policy. *Id.* at 549, 508 N.E.2d at 435.

58. *Id.* at 551, 508 N.E.2d at 436.

liability insurers appealed a summary judgment order requiring them to assume defense and indemnification obligations under their 1971 policies in an action filed against the insured in 1975.⁵⁹ These 1971 policies provided coverage for claims made after the expiration of the policy period under limited circumstances.⁶⁰ Coverage was available if, during the policy period, the insured provided notice of either a claimant's intent to bring an action resulting from a covered occurrence or notice of an occurrence that may give rise to a claim.⁶¹ During the policy period, Arthur Anderson was sued by shareholders of King Resources Corporation ("KRC"), a corporation Arthur Anderson had audited.⁶² The shareholders alleged that Arthur Anderson failed to disclose certain affiliations of KRC and transactions entered by KRC.⁶³ This failure to disclose allegedly resulted in an overstatement of KRC's assets and profits and an understatement of its liabilities.⁶⁴ Arthur Anderson provided notice of this action to its excess insurers during the 1971 policy period.⁶⁵ In 1975, Arthur Anderson was sued for alleged auditing improprieties from the same 1971 period involving KRC and the same affiliates.⁶⁶

The appellate court determined that although the dispute and evidence in the 1975 action were not identical, they were significantly similar.⁶⁷ The court further determined that Arthur Anderson's 1971 notification of suit was also a notice of an occurrence that might give rise to liability after the policy period.⁶⁸ Consequently, the court held that the insurers' policies covered the 1975 cause of action.⁶⁹

The appellate court in *St. Paul Mercury Insurance Co. v. Statistical Tabulating Corp.* also interpreted "occurrence" language in a professional liability policy, but in the context of a prior errors provision.⁷⁰ In *Statistical Tabulating Corp.*, St. Paul Mercury Insurance Company ("St. Paul") sought a declaratory judgment regarding its obligation to defend Statistical Tabulating Corpora-

59. *Arthur Anderson & Co.*, 149 Ill. App. 3d at 238-39, 500 N.E.2d at 709-10.

60. *Id.* at 237-38, 500 N.E.2d at 709.

61. *Id.*

62. *Id.* at 238, 500 N.E.2d at 709.

63. *Id.* at 239, 500 N.E.2d at 710.

64. *Id.*

65. *Id.* at 238, 500 N.E.2d at 709.

66. *Id.*

67. *Id.* at 240, 500 N.E.2d at 710.

68. *Id.* at 241, 500 N.E.2d at 711.

69. *Id.*

70. *Statistical Tabulating Corp.*, 155 Ill. App. 3d at 547, 508 N.E.2d at 434.

tion ("Statistical Tabulating") in an underlying action that alleged, among other things, negligent rendering of professional services.⁷¹

The professional liability policy was effective on January 1, 1983, and contained a prior errors provision within its coverage.⁷² The provision provided coverage for occurrences before the policy's effective date if the insured did not have knowledge of the prior error as of the policy's effective date, "nor any reasonable way to foresee that a claim [for a prior error] may be brought. . . ."⁷³ In 1979 and 1980, Motive Parts Incorporated ("Motive Parts"), a Statistical Tabulating customer, threatened to bring an action against Statistical Tabulating for the negligent performance of services.⁷⁴ Approximately three years later, Motive Parts sent a letter to Statistical Tabulating indicating its intent to sue Statistical Tabulating. Statistical Tabulating received the letter on January 3, 1983, and forwarded the letter to its new insurer, St. Paul.⁷⁵ Thereafter, Motive Parts filed its complaint against Statistical Tabulating.⁷⁶

The court determined that the 1979 and 1980 correspondence between Statistical Tabulating and Motive Parts constituted notice to Statistical Tabulating that prior errors had occurred.⁷⁷ Moreover, the court concluded that it was reasonably foreseeable that Statistical Tabulating faced imminent legal action as early as 1979.⁷⁸ The court, however, concluded that the intervening period from 1980 through 1983 may have diminished the foreseeability of a potential legal action.⁷⁹ Consequently, the court held coverage may be available under the prior errors provision.⁸⁰

3. Credit Disability Insurance

In *Verbaere v. Life Investors Co. of America*,⁸¹ the Appellate Court for the First District considered an insurer's coverage obligations under a credit disability policy. The plaintiff in *Verbaere*

71. *Id.*

72. *Id.* at 549-50, 508 N.E.2d at 435-36.

73. *Id.* at 549, 508 N.E.2d at 435.

74. *Id.* at 548, 508 N.E.2d at 434-35. Statistical Tabulating provided data processing services to Motive Parts during 1979. Motive Parts alleged that the services rendered by Statistical Tabulating resulted in inaccurate billing to customers. *Id.*

75. *Id.*

76. *Id.* at 549, 508 N.E.2d at 435.

77. *Id.* at 551, 508 N.E.2d at 436.

78. *Id.*

79. *Id.*

80. *Id.* The court remanded the case for a factual determination of this and other issues. *Id.*

81. 157 Ill. App. 3d 676, 510 N.E.2d 946 (1st Dist. 1987).

had secured credit disability coverage⁸² from Life Investors Company of America ("Life Investors") to secure a motor home loan.⁸³ Thereafter, the plaintiff became disabled and Life Investors commenced monthly payments to his bank.⁸⁴ A few years later, Verbaere sold his residence.⁸⁵ To eliminate a mortgage on the property, Verbaere entered into an agreement with his bank whereby he would deposit the amount of remaining debt on the motor home in an escrow account.⁸⁶ Thereafter, the bank seized the money in escrow and paid the loan in full.⁸⁷ Upon notice of the bank's action, Life Investors cancelled the policy and returned the unearned premium.⁸⁸

The beneficiary provision of the policy provided that the "proceeds . . . are payable to the Creditor to the extent of its interest and the balance, if any, shall be paid to the Obligor. . . ."⁸⁹ The cancellation provision of the policy provided that cancellation would occur "[i]f through prepayment . . . or otherwise, the indebtedness . . . is discharged prior to its scheduled maturity date. . . ."⁹⁰ Life Investors contended that, upon discharge of the debt, the cancellation provision terminated its obligations under the policy.⁹¹ The court disagreed and held that the bank's payment of the insured debt after the insured's disability did not affect the insured's right to continued benefits under the policy.⁹² In reaching this conclusion, the court cited dicta in *Vogelsang v. Credit Life Insurance Co.*,⁹³ for the proposition that the commencement of disability is the condition that must be met before liability attaches.⁹⁴ Im-

82. Credit disability insurance "provide[s] indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy." ILL. REV. STAT. ch. 73, para. 155.52(b) (1985).

83. *Verbaere*, 167 Ill. App. 3d at 677, 510 N.E.2d at 947.

84. *Id.*

85. *Id.*

86. *Id.* The escrow deposit served as collateral on the motor home loan as well as a means of eliminating the mortgage. *Id.*

87. *Id.*

88. *Id.* at 678, 510 N.E.2d at 947.

89. *Id.* at 678, 510 N.E.2d at 947-48.

90. *Id.* at 678, 510 N.E.2d at 947.

91. *Id.* at 679, 510 N.E.2d at 948.

92. *Id.*

93. 119 Ill. App. 2d 67, 255 N.E.2d 479 (3d Dist. 1970). In *Vogelsang*, the insured became disabled and filed a claim with its insurer after the underlying debt was satisfied. Although the court remanded the case for a factual determination regarding the diligence of the insured's notice of claim, the court noted that "it is the onset . . . of the disability during [the policy] period . . . which is the condition precedent upon which" liability depends. The *Vogelsang* court stated that if this were the sole issue, it would have summarily reversed in favor of the insured. *Id.* at 71, 255 N.E.2d at 482.

94. *Verbaere*, 157 Ill. App. 3d at 679, 510 N.E.2d at 948.

plicit in this reasoning, the *Verbaere* court held, is the conclusion that satisfaction of the debt subsequent to disability does not absolve the insurer of liability under the policy.⁹⁵

Also in support of its holding, the court observed that upholding Life Investor's interpretation of the policy would be inconsistent with the overall construction of the policy and would render the beneficiary provision meaningless.⁹⁶ In contrast, the court reasoned, construing the beneficiary provision to require continued payment for disability would maintain the effectiveness of the cancellation provision in the event that the underlying debt had been paid before any disability had occurred.⁹⁷ The *Verbaere* decision establishes that disability is the insured condition in credit disability policies. The duration of indebtedness merely represents the time frame in which liability may attach.

4. Reinsurance

The Appellate Court for the First District adjudicated a reinsurance coverage dispute in *United Equitable Insurance Co. v. Reinsurance Co. of America Inc.*⁹⁸ In *Reinsurance Co. of America, United Equitable Insurance Company* ("United Equitable") sought an injunction and declaratory judgment regarding Reinsurance Company of America's ("RCA") obligations to indemnify under a retrocessional agreement⁹⁹ with United Equitable.¹⁰⁰ Prior to the retrocessional agreement, United Equitable entered into a reinsurance agreement¹⁰¹ with United Fire Insurance Company ("United Fire") whereby it assumed all of United Fire's liability under its outstanding property and casualty policies.¹⁰² United Eq-

95. *Id.*

96. *Id.* at 680, 510 N.E.2d at 949.

97. *Id.*

98. 157 Ill. App. 3d 724, 510 N.E.2d 914 (1st Dist. 1987).

99. For a definition of a retrocessional agreement, see *infra* note 101.

100. *Reinsurance Co. of America*, 157 Ill. App. 3d at 728, 510 N.E.2d at 917.

101. A reinsurance agreement is

[a] contract whereby one party, the reinsurer, agrees to indemnify another, the reinsured, either in whole or in part, against loss or disability which [the reinsured party] may sustain . . . under a separate and original contract of insurance with a third party, the insured. . . . A contract by which an insurance company, in consideration of the transfer of the policies . . . of an [insurer] which is insolvent or wishes to retire from business, assumes all or certain liabilities of the latter [insurer].

BALLENTINE'S LAW DICTIONARY 1082 (3d ed. 1969). A retrocessional agreement is, in turn, the reinsurance of a reinsurance contract. The assuming party agrees to reinsure all or a portion of the risk that the ceding party had already assumed in a prior reinsurance transaction. *Reinsurance Co. of America*, 157 Ill. App. 3d at 726, 510 N.E.2d at 916.

102. *Reinsurance Co. of America*, 157 Ill. App. 3d at 726, 510 N.E.2d at 916.

uitable entered into this reinsurance agreement based upon United Fire's representations that RCA would, in turn, reinsure United Equitable for all its liability under the original reinsurance agreement.¹⁰³ United Equitable received \$100,000 from United Fire for assuming the reinsurance obligation.¹⁰⁴

Subsequently, United Equitable entered into the contemplated retrocessional agreement with RCA and paid RCA \$100,000.¹⁰⁵ The retrocessional agreement provided that United Equitable desired relief from "all liability emanating from any and all individual policy claims . . . as would be . . . paid by them under the [underlying reinsurance agreement]."¹⁰⁶ RCA agreed "to indemnify and reimburse . . . United Equitable . . . for all individual policy claims [it] . . . is obligated to pay . . . under the terms . . . of [the underlying reinsurance agreement]."¹⁰⁷ The retrocessional agreement also provided that liability would be limited to the "claim amount that [United Fire's independent underwriting manager] had in force on individual . . . policies."¹⁰⁸

RCA interpreted this last provision to require indemnification of ten percent of the first \$50,000 on any primary policy.¹⁰⁹ RCA reached this conclusion based upon United Fire's cession to other reinsurers of all but ten percent of the first \$50,000 of liability on these policies.¹¹⁰ Therefore, when one of these reinsurers became insolvent, RCA refused to pay those portions of liability attributable to the insolvent insurer.¹¹¹

The *Reinsurance Co. of America* court disagreed with RCA and

103. *Id.* at 725-26, 510 N.E.2d at 915. These transactions were the result of a 1981 order issued by the New York Insurance Department which required United Fire to cease underwriting property and casualty policies because of solvency concerns. United Fire first attempted to cede its property and casualty policies to RCA directly, but the New York regulators refused to allow the transaction because RCA was not licensed as a primary property and casualty insurer. United Fire turned to United Equitable to solve this problem. *Id.* at 725-26, 510 N.E.2d at 915-16.

104. *Id.* at 726, 510 N.E.2d at 916.

105. *Id.* at 727, 510 N.E.2d at 916.

106. *Id.* at 729, 510 N.E.2d at 917.

107. *Id.*

108. *Id.* at 729-30, 510 N.E.2d at 918.

109. *Id.* at 728, 510 N.E.2d at 917.

110. *Id.* at 727, 510 N.E.2d at 916-17. United Fire had contracted with an independent underwriting agency (Transcontinental Underwriters Agency) to manage the property and casualty policies on United Fire's behalf. The underwriting manager ceded all but ten percent of the first \$50,000 of liability on United Fire's behalf. *Id.* The court noted that United Fire remained liable to the individual policy holders for one hundred percent of the liability for which it had originally contracted. *Id.* at 730, 510 N.E.2d at 918.

111. *Id.* at 728, 510 N.E.2d at 917.

affirmed the trial court's summary judgment order in favor of United Equitable.¹¹² Because the court determined that the retrocessional agreement was not ambiguous,¹¹³ it relied upon the agreement itself to determine liability.¹¹⁴ Based upon an analysis of the agreement as a whole, the court held that the agreement clearly required RCA to fully compensate United Equitable for all claims that it would be obligated to pay on behalf of United Fire.¹¹⁵ The court further held that the provisions relied upon to support RCA's position could not be interpreted as a limitation on RCA's liability.¹¹⁶ Reading the provision in light of the rest of the agreement, the court determined that the provision merely described the original liability of the primary insurer.¹¹⁷

Reinsurance Co. of America provides an addition to the small body of reinsurance case law in Illinois. Based upon the reasoning of the court, it appears that standard contract construction shall prevail in reinsurance disputes. Absent ambiguity, reinsurance contracts shall be construed by the textual provisions of the contract and without reference to extrinsic or parol evidence.¹¹⁸

B. Policy Exclusions in Contribution Actions

The Illinois Appellate Courts had several occasions to consider the application of policy exclusions in contribution actions. Although the Illinois General Assembly enacted section 143.01 of the insurance code¹¹⁹ to invalidate certain motor vehicle policy family exclusion clauses, the courts have refused to expand its application.

The Appellate Court for the First District considered the application of policy exclusions in contribution actions in *Allstate Insur-*

112. *Id.* at 730-31, 510 N.E.2d at 918-19.

113. *Id.* at 729, 510 N.E.2d at 917.

114. *Id.*

115. *Id.* at 729-30, 510 N.E.2d at 917-18. The court noted the following characteristics of the agreement as dispositive of RCA's assumption of full liability: (1) payment of identical premiums in both the reinsurance and retrocessional agreements; (2) expiration of the retrocessional agreement upon payment of all the individual policy claims; and (3) the recitation within the agreement of United Equitable's intention to be fully indemnified and RCA's willingness to fully indemnify. *Id.* at 729, 510 N.E.2d at 918.

116. *Id.* at 730, 510 N.E.2d at 918.

117. *Id.*

118. *Id.* at 730-31, 510 N.E.2d at 919.

119. ILL. REV. STAT. ch. 73, para. 755.01(a) (1985). This section states: "A provision in a policy of vehicle insurance described in section 4 excluding coverage for bodily injury to members of the family of the insured shall not be applicable when a third party acquires a right of contribution against a member of the injured person's family." *Id.* Section 143.01 was made effective on July 11, 1984. *Id.*

*ance Co. v. Boston Whaler, Inc.*¹²⁰ In the underlying action, the insured's son was injured while riding in his father's boat.¹²¹ The insured's son filed a product's liability action against Boston Whaler, the boat's manufacturer.¹²² In turn, Boston Whaler sought contribution from the father.¹²³ The father's insurer, Allstate, sought a declaratory judgment regarding its obligations under a recreational package policy and a homeowner's policy.¹²⁴ Both policies contained clauses excluding coverage for "bodily injury . . . to any relative . . . residing in [the insured's] household."¹²⁵ In addition, both policies provided that if either policy conflicted "with the statutes in [the insured's] state, the provisions are amended to conform to those statutes."¹²⁶ On the basis of this policy language, Boston Whaler contended that section 143.01 should be applied retroactively to the contribution action.¹²⁷ Moreover, Boston Whaler argued, the state law conformity clauses amended the policies to conform with section 143.01 upon its effective date.¹²⁸

The court rejected Boston Whaler's arguments and held that the exclusion clauses were valid in contribution actions.¹²⁹ First, the court held that section 143.01 should not be applied retroactively, pursuant to the decision in *Economy Fire & Casualty Co. v. Green*.¹³⁰ The court rejected also the notion that state law con-

120. 157 Ill. App. 3d 785, 510 N.E.2d 1180 (1st Dist. 1987), *cert. denied*, 116 Ill. 2d 574, 515 N.E.2d 100 (1987).

121. *Id.* at 787, 510 N.E.2d at 1181.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at 788, 510 N.E.2d at 1181.

128. *Id.*

129. *Id.* at 790, 510 N.E.2d at 1183.

130. 139 Ill. App. 3d 147, 487 N.E.2d 100 (1st Dist. 1985). In *Green*, a child was injured when he was hit by a truck shortly after his mother had let him out of her automobile. When the child sued the truck driver, the truck driver sought contribution from the mother. In refusing to retroactively apply section 143.01 to events that occurred in 1979, the court stated:

A reading of the amendment . . . reveals that subsection (a) . . . does not provide that it shall be applied retroactively. Moreover, at the time *Green's* policy was issued, there was no statute prohibiting the family exclusion. . . . Under these circumstances, the retroactive application of section 143.01 to the insurance contract would create a new financial obligation on the part of [the insurer] expressly not agreed to, thus impairing its vested contractual right to exclude coverage for family members.

Id. at 149, 487 N.E.2d at 102.

formity clauses act as automatic policy amendment provisions.¹³¹ Rather, the court held that these clauses simplify insurance policies by informing the insured of the applicability of state law to the policy without recounting all of the pertinent statutory and case law in the policy.¹³²

In *State Farm Fire & Casualty Co. v. Holeczy*,¹³³ the Appellate Court for the First District addressed whether a family exclusion clause in a homeowner's policy is valid in a contribution action. In the underlying action, the insured's son sustained an injury as a result of a lawn mower accident.¹³⁴ In the ensuing products liability action, the manufacturer sought contribution from the father.¹³⁵ State Farm, the father's insurer, sought a declaratory judgment regarding its obligation to defend the contribution action.¹³⁶ The homeowner's policy contained a family exclusion and provided coverage for property loss associated with motor vehicles "used to service an insured's residence [and] not licensed for road use."¹³⁷

The insureds made several arguments in support of coverage. First, they noted that the family exclusion applied only to "bodily injury to an insured" and, thus, argued it did not apply to injuries to a non-insured such as the manufacturer.¹³⁸ Second, they argued that the family exclusion clause was invalid because the homeowner's policy was a policy of vehicle insurance as defined by section 143.01.¹³⁹ Finally, the insureds contended that, although section 143.01 applies only to vehicle insurance, the policy concerns underpinning the law should be applied to abrogate the exclusion in their homeowner's policy.¹⁴⁰

The *Holeczy* court rejected these arguments and held that the family exclusion precluded the defense of the contribution action.¹⁴¹ First, the court determined that whether the manufacturer

131. *Boston Whaler*, 157 Ill. App. 3d at 789-90, 510 N.E.2d at 1182-83.

132. *Id.*

133. 152 Ill. App. 3d 448, 504 N.E.2d 971 (1st Dist. 1987), *cert. denied*, 115 Ill. 2d 511, 511 N.E.2d 437 (1987).

134. *Id.* at 449, 504 N.E.2d at 972.

135. *Id.*

136. *Id.*

137. *Id.* at 451-52, 504 N.E.2d at 973.

138. *Id.* at 449-50, 504 N.E.2d at 972-73. The insured argued that, should the manufacturer be found liable in the first party action, it would be seeking compensation through its contribution action for an economic loss. The insured urged the court to consider this sort of economic loss as "property damage" within the meaning of the policy. *Id.* at 450, 504 N.E.2d at 973.

139. *Id.* at 451, 504 N.E.2d at 973.

140. *Id.* at 452, 504 N.E.2d at 974.

141. *Id.* at 451-53, 504 N.E.2d at 973-74.

sought recovery from the insured for "bodily injury" or economic loss was not significant.¹⁴² If the manufacturer's injury was personal, the exclusion clearly applied. If the manufacturer's injury was financial, the manufacturer's potential loss in its suit with the insured's child would be an intangible property loss that was outside the scope of the policy's coverage.¹⁴³ Second, the court refused to consider the homeowner's policy as a policy of vehicle insurance as defined in section 143.01.¹⁴⁴ The extremely limited vehicle coverage provided by the policy was not considered sufficient to render the homeowner's policy a policy of vehicle insurance.¹⁴⁵ Third, the court refused to extend section 143.01 to homeowner's policies.¹⁴⁶ The court reasoned that if the legislature intended a broader abrogation of the family exclusion, it would not have expressly limited the legislation to vehicle insurance.¹⁴⁷ The court, therefore, refused to invalidate the exclusion.¹⁴⁸

In *Aetna Casualty & Surety Co. v. Beautiful Signs, Inc.*,¹⁴⁹ the Appellate Court for the Third District addressed the validity of a commercial general liability "employee" exclusion in a contribution action. In that case, the underlying action involved an employee of Beautiful Signs who was fatally injured on a customer's property.¹⁵⁰ The employee's estate sued the customer who, in turn, sought contribution from Beautiful Signs.¹⁵¹ Beautiful Sign's pol-

142. *Id.* at 451, 504 N.E.2d at 973.

143. *Id.* at 450-51, 504 N.E.2d at 973. Property damage was defined as "physical injury to or destruction of tangible property". *Id.* The court cited *Sentry Ins. Co. v. S & L Home Heating Co.*, 91 Ill. App. 3d 687, 414 N.E.2d 1218 (1st Dist. 1980); and *Hartford Accident & Indem. Co. v. Case Foundation Co.*, 10 Ill. App. 3d 1115, 294 N.E.2d 7 (1st Dist. 1973), for the proposition that economic losses as those sought to be compensated for in a contribution action are not "property damage" as defined in general liability insurance policies. *Holeczy*, 152 Ill. App. 3d at 451, 504 N.E.2d at 973.

144. *Holeczy*, 152 Ill. App. 3d at 451-52, 504 N.E.2d at 973.

145. *Id.* at 452, 504 N.E.2d at 973.

146. *Id.* at 452, 504 N.E.2d at 974.

147. *Id.* at 452-53, 504 N.E.2d at 974. The court cited *Country Mutual Ins. Co. v. Jacobus*, 601 F. Supp. 937 (C.D. Ill. 1985), in support of its holding. The *Jacobus* court stated:

The Illinois courts had previously held that the household exclusion did apply in the case of a motor vehicle contribution claim . . . and it took an act of the legislature to change that law. To hold that the household exclusion [under a farmer's liability policy] does not apply to the contribution claim would be to change the law . . . [and that] is within the province of the legislature.

Id. at 941.

148. *Holeczy*, 152 Ill. App. 3d at 453, 504 N.E.2d at 974.

149. 146 Ill. App. 3d 434, 496 N.E.2d 1229 (3d Dist. 1986), *cert. denied*, — Ill. 2d —, — N.E.2d — (1987).

150. *Id.* at 435, 496 N.E.2d at 1230.

151. *Id.*

icy excluded coverage for "bodily injury to any employee . . . or [for] any obligation of the insured to indemnify because of damages arising out of such injury. . . ." ¹⁵² Beautiful Signs argued that the exclusion should not apply to the contribution action because a contribution action is distinct from a direct action. ¹⁵³ The defendant also argued that the indemnity exclusion applies only to indemnification actions, not to contribution actions. ¹⁵⁴

The court determined that the "employee" exclusion was valid in contribution actions and, therefore, declined to address the indemnity argument advanced by Beautiful Signs. ¹⁵⁵ The court held that for the purposes of the liability policy, contribution is no different than a direct action. ¹⁵⁶ In support of this holding, the court cited *State Farm Mutual Auto Insurance Co. v. Suarez*, ¹⁵⁷ for the proposition that the insured is liable for the injuries suffered by the original plaintiff, even though the liability resulted from a contribution claim. ¹⁵⁸ Moreover, the court noted that double coverage was unnecessary because workers' compensation insurance covered the employee's estate. ¹⁵⁹

In *Midland Insurance Co. v. Bell Fuels, Inc.*, ¹⁶⁰ the Appellate Court for the First District dealt with a fact situation similar to that in *Beautiful Signs* and reached the same conclusion. ¹⁶¹ In the underlying action in *Bell Fuels*, the Ford Motor Company ("Ford") sought contribution from Bell Fuels Incorporated ("Bell") for damages that a Bell employee sought from Ford. ¹⁶² The Bell employee was injured while operating a Ford automobile leased by Bell. ¹⁶³ Bell tendered a defense of the contribution action to its insurer, Midland Insurance Company ("Midland"). Midland, however, refused to assume the third party defense and sought a declaratory judgment. ¹⁶⁴ Midland contended that the action was not covered because an employee exclusion clause precluded coverage for "bodily injury to any employee . . . or any

152. *Id.*

153. *Id.* at 436, 496 N.E.2d at 1230.

154. *Id.*

155. *Id.* at 437, 496 N.E.2d at 1231.

156. *Id.* at 436, 496 N.E.2d at 1230.

157. 104 Ill. App. 3d 556, 432 N.E.2d 1204 (1st Dist. 1982).

158. *Beautiful Signs*, 146 Ill. App. 3d at 436-37, 496 N.E.2d at 1231.

159. *Id.* at 436, 496 N.E.2d at 1230.

160. 159 Ill. App. 3d 780, 513 N.E.2d 1 (1st Dist. 1987).

161. *Id.* at 786, 513 N.E.2d at 4.

162. *Id.* at 781, 513 N.E.2d at 1-2.

163. *Id.* at 781, 513 N.E.2d at 1.

164. *Id.*

obligation to indemnify another" resulting from injury to any employee.¹⁶⁵ In response, Bell argued that the employee exclusion applied only to direct actions brought by an employee for bodily injury and that the exclusion language barring "obligations to indemnify" a third party did not apply to contribution actions.¹⁶⁶

The *Bell Fuels* court rejected Bell's construction of the policy exclusion.¹⁶⁷ The court held that the employee exclusion was valid in contribution actions.¹⁶⁸ In reaching this holding, the court noted that although the contribution action is, in form, an action for recovery of economic damages, Bell's liability was caused by the bodily injury sustained by its employee.¹⁶⁹ This exact type of injury, the court held, was excluded by the policy.¹⁷⁰ The court also dismissed Bell's attempt to distinguish between indemnity and contribution.¹⁷¹ The court determined that the parties to the contract expected the exclusion to apply to contribution.¹⁷²

Bell Fuels, *Beautiful Signs*, and similar decisions exhibit a pronounced trend.¹⁷³ Absent either express statutory or contractual language to the contrary, these decisions indicate that exclusion clauses will be held valid in contribution actions. As a result, a

165. *Id.* at 782, 513 N.E.2d at 2.

166. *Id.*

167. *Id.* at 786, 513 N.E.2d at 4.

168. *Id.* at 783, 513 N.E.2d at 2-3. The *Bell Fuels* court concurred with the findings of the court in *Aetna Casualty & Surety Co. v. Beautiful Signs*, 146 Ill. App. 3d 434, 496 N.E.2d 1229 (3d Dist. 1986).

169. *Bell Fuels*, 159 Ill. App. 3d at 783, 513 N.E.2d at 3.

170. *Id.* at 784, 513 N.E.2d at 3.

171. *Id.* at 785, 513 N.E.2d at 4.

172. *Id.* The court distinguished *Howalt v. Ohio Casualty Co.*, 142 Ill. App. 3d 435, 491 N.E.2d 1207 (1st Dist. 1986). In *Howalt*, an injured employee brought an action against a co-employee who, in turn, sought contribution from their employer. The employer's insurer refused to defend the employer because of a co-employee exclusion that precluded coverage for any employee who caused injury to another "employee of the same employer." The *Howalt* court held that this exclusion did not apply in contribution actions despite the fact that the contribution action arose from an underlying claim for bodily injury to a co-employee and workers' compensation insurance was available. *Id.* at 441, 491 N.E.2d at 1211. The *Bell Fuels* court distinguished the *Howalt* decision because *Bell Fuels*' exclusion denied coverage for obligations to indemnify a third party whereas the exclusion in *Howalt* denied coverage for personal injury claims brought by one employee against another employee. *Bell Fuels*, 159 Ill. App. 3d at 786, 513 N.E.2d at 4.

173. In a decision rendered shortly after the *Survey* period, the Appellate Court for the First District continued this trend. *Reliance Ins. Co. v. Giannini*, 158 Ill. App. 3d 657, 511 N.E.2d 755 (1st Dist. 1987). The *Giannini* court upheld the validity of an employee exclusion in a contribution action that arose out of a suit brought by a third party defendant's employee. *Id.* at 661, 511 N.E.2d at 758-59. In so holding, the court cited *Bell Fuels* with approval. *Id.* at 660-62, 511 N.E.2d at 757-58.

decision such as *Howalt v. Ohio Casualty Insurance Co.*¹⁷⁴ may be construed narrowly and confined to its particular facts.

C. Contractual Time Limitations

During the *Survey* year, Illinois courts strictly construed policy limitations and required insureds to bring suit against their insurers within contractually specified periods of time. Invariably, insureds who failed to comply with the contractual time limitations, and the statutes that govern them, were denied coverage under the policies.

In *Wilson v. Indiana Insurance Co.*,¹⁷⁵ a water pipe burst in Wilson's home while she was away.¹⁷⁶ Insulation absorbed the resulting moisture which caused decay in the structural supports of her house.¹⁷⁷ Although the pipe burst in January, 1983, Wilson allegedly did not discover the loss until November, 1983, and did not file a proof of loss with her insurer until late January, 1984.¹⁷⁸ The Indiana Insurance Company ("Indiana Insurance") denied coverage on October 30, 1984, and Wilson filed an action to recover under the policy.¹⁷⁹ Wilson's homeowner's policy provided that "[n]o suit or action on this policy for . . . any claim shall be sustainable . . . unless commenced within twelve months next after inception of the loss."¹⁸⁰

In upholding the trial court's dismissal of Wilson's complaint, the *Wilson* court refused to consider the date of the "inception of the loss" as commencing upon discovery of the loss by the insured.¹⁸¹ Rather, the *Wilson* court expressly adopted the reasoning of the court in *Sager Glove Corp. v. Aetna Insurance Co.*,¹⁸² and held that the contractually agreed upon time limitation barred Wilson's action.¹⁸³

174. 142 Ill. App. 3d 435, 491 N.E.2d 1207. See *supra* note 172.

175. 150 Ill. App. 3d 669, 502 N.E.2d 69 (4th Dist. 1986), *cert. denied*, 114 Ill. 2d 559, 508 N.E.2d 737 (1987).

176. *Id.* at 670, 502 N.E.2d at 70.

177. *Id.*

178. *Id.* at 670-71, 502 N.E.2d at 70.

179. *Id.*

180. *Id.* at 671, 502 N.E.2d at 71.

181. *Id.* at 672, 502 N.E.2d at 71.

182. 317 F.2d 439 (7th Cir. 1963). In *Sager*, the plaintiff sought recovery for property damage that had occurred more than twelve months prior to the filing of a suit for recovery of insurance proceeds. The policy required the insured to bring an action within twelve months of the inception of the loss. The plaintiff argued that the inception of the loss was from the date of discovery of the loss. The *Sager* court held that "[t]he loss occurs and has its inception whether or not the insured knows of it." *Id.* at 441.

183. *Wilson*, 150 Ill. App. 3d at 672-73, 502 N.E.2d at 72.

In *Hartford Casualty Co. v. Snyders*,¹⁸⁴ the Appellate Court for the Fifth District considered what constitutes reasonably timely notice of an occurrence that may give rise to liability under a medical malpractice policy. In *Snyders*, the underlying medical malpractice action was brought against Snyders and a drug manufacturer on October 1, 1981.¹⁸⁵ In an earlier action that arose out of the same set of facts, but named only the drug manufacturer, Snyders was named as a respondent in discovery in May, 1981.¹⁸⁶ Although Snyders' medical malpractice policy required Snyders to "immediately forward to the company every demand notice, summons or other process received by him" and "written notice as soon as practicable" regarding any occurrence reasonably likely to involve coverage, the defendant did not notify his insurer, the Hartford Casualty Company ("Hartford"), of any action or potential action until June 11, 1982.¹⁸⁷ From March 23, 1982, through June 5, 1982, the co-defendant drug manufacturer warned Snyders of the possibility of a default judgment if he failed to respond to the action.¹⁸⁸ As a result, Hartford sought a declaratory judgment regarding its duties to the defendant.

Hartford contended that Snyders had violated the notice provisions of his policies by providing late notice of the action pending against him.¹⁸⁹ Snyders asserted that he was confused and did not realize he was being sued.¹⁹⁰ The trial court held that Hartford had a duty to defend Snyders because the delayed notice did not prejudice Hartford. The appellate court rejected the trial court's holding and noted that the policy requirement of notice "as soon as practicable" required reasonably timely notice.¹⁹¹ The court further noted that regardless of an insured's status, it is "incumbent upon him to seek clarification of his status."¹⁹² Based upon these standards, the court held that a seven-to-thirteen-month delay in providing notice was unreasonable and, under the circum-

184. 153 Ill. App. 3d 1040, 506 N.E.2d 627 (5th Dist. 1987), *cert. denied*, 116 Ill. 2d 554, 515 N.E.2d 108 (1987).

185. *Id.* at 1041, 506 N.E.2d at 628.

186. *Id.*

187. *Id.* at 1041-42, 506 N.E.2d at 628. Snyders also had medical malpractice coverage from an additional insurer, the Illinois State Medical Inter-Insurance Exchange ("ISMIE"). Snyders did not inform ISMIE of the suit until June 5, 1982. ISMIE sought a declaratory judgment against Snyders and the trial court consolidated ISMIE's action with Hartford's on May 26, 1983. *Id.*

188. *Id.* at 1041, 506 N.E.2d at 628.

189. *Id.*

190. *Id.* at 1043, 506 N.E.2d at 629.

191. *Id.* at 1042, 506 N.E.2d at 628.

192. *Id.* at 1043, 506 N.E.2d at 629.

stances,¹⁹³ Snyders had no justification for the delay.¹⁹⁴

The Appellate Court for the Fourth District also construed contractual time limitations in the insurer's favor in *Village of Lake in the Hills v. Illinois Emcasco Insurance Co.*¹⁹⁵ In *Village of Lake*, the Village of Lake in the Hills (the "Village") held a property insurance policy with Illinois Emcasco Insurance Company ("Emcasco") that required the insured to give "immediate written notice" to the insurer of any loss.¹⁹⁶ The policy required the Village to bring an action under the policy within one year after the loss occurred.¹⁹⁷ On June 7, 1980, lightning struck and damaged one of the Village's facilities.¹⁹⁸ In July, 1981, the Village gave written notice of loss to Emcasco, and in August, 1981, Emcasco denied the claim in writing.¹⁹⁹ The Village filed its original action against Emcasco on December 12, 1981.

The *Village of Lake* court held that the contractual time limitation on bringing action under the policy barred the Village's claim.²⁰⁰ In so holding, the court rejected the Village's contention that municipalities are exempt from contractual limitations on their ability to bring a suit under an insurance policy.²⁰¹ The court acknowledged that *City of Shelbyville v. Shelbyville Restorium, Inc.*²⁰² upheld the common law governmental immunity from statutes of limitation.²⁰³ The court, however, held the case inapplicable to the facts of *Village of Lake* because *Village of Lake* involved neither a statute nor an ultra vires attempt to waive the common law immunity from statutes of limitation.²⁰⁴

According to section 143.1 of the Illinois Insurance Code, contractual limitations on "the period within which the insured may bring suit [under the contract are] . . . tolled from the date proof of loss is filed . . . [as] required by the policy until the date the claim is

193. *Id.* The *Snyders* court noted the following circumstances: in twenty-five years of practice, Snyders had dealt with attorneys; Snyders had provided depositions and statements to attorneys; Snyders had been served with a summons; and Snyders had received phone calls from attorneys apprising him of his status in this particular case. *Id.*

194. *Id.*

195. 153 Ill. App. 3d 815, 506 N.E.2d 681 (2d Dist. 1987), *cert. denied*, 116 Ill. 2d 560, 515 N.E.2d 128 (1987).

196. *Id.* at 815, 506 N.E.2d at 682.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.* at 819, 506 N.E.2d at 684.

201. *Id.* at 818, 506 N.E.2d at 684.

202. 96 Ill. 2d 457, 451 N.E.2d 874 (1983).

203. *Village of Lake in the Hills*, 153 Ill. App. 3d at 818, 506 N.E.2d at 684.

204. *Id.*

denied in whole or in part."²⁰⁵ The Appellate Courts for the Second and Third Districts interpreted section 143.1 in *Davis v. Allstate Insurance Co.*,²⁰⁶ and *Kondourajian v. Millers National Insurance Co.*,²⁰⁷ respectively.

In *Davis*, a fire completely destroyed Davis' residence on March 26, 1983.²⁰⁸ Davis' homeowner's policy provided that "[n]o suit or action may be brought [unless it is] brought within one year after the loss."²⁰⁹ The policy further provided that "proof of loss [must be] signed and sworn to by the insured."²¹⁰ Davis submitted the proof of loss as required on May 24, 1983, and Allstate denied Davis' claim on December 12, 1983, and returned Davis' proof of loss.²¹¹ On November 16, 1984, Davis filed an action to recover under the policy.²¹² Davis asserted that her insurer's denial of claim was inadequate to recommence the running of the contractual time limitation.²¹³ The *Davis* court rejected this argument and held that the inclusion of the insured's proof of loss did not obscure the insurer's clear denial of claim.²¹⁴ As a result, under the terms of the policy and section 143.1, Davis' November 16, 1984, cause of action was time barred.²¹⁵

The court in *Kondourajian v. Millers National Insurance Co.*²¹⁶ similarly refused to interpret expansively section 143.1.²¹⁷ In *Kondourajian*, Kondourajian discovered that jewelry had been stolen from his store on December 12, 1983.²¹⁸ Kondourajian's policy required the insured to bring "suit . . . for . . . recovery . . . under [the] policy . . . within twelve (12) months . . . after discovery by the insured of the occurrence [giving] rise to the claim. . . ."²¹⁹ Kondourajian did not submit his signed and sworn proof of loss, as required under the policy, until August 29, 1984.²²⁰ His insurer, Millers National, denied the claim on November 8, 1984, and

205. ILL. REV. STAT. ch. 73, para. 755.1 (1985).

206. 147 Ill. App. 3d 581, 498 N.E.2d 246 (2d Dist. 1986).

207. 151 Ill. App. 3d 870, 503 N.E.2d 775 (3d Dist. 1987).

208. *Davis*, 147 Ill. App. 3d at 582, 498 N.E.2d at 247.

209. *Id.* at 583, 498 N.E.2d at 247.

210. *Id.* at 584, 498 N.E.2d at 248.

211. *Id.* at 582-83, 498 N.E.2d at 247.

212. *Id.* at 582, 498 N.E.2d at 247.

213. *Id.* at 583-84, 498 N.E.2d at 247-48.

214. *Id.*

215. *Id.* at 584, 498 N.E.2d at 248.

216. 151 Ill. App. 3d 870, 503 N.E.2d 775 (3d Dist. 1987).

217. *Id.* at 872, 503 N.E.2d at 777.

218. *Id.* at 871, 503 N.E.2d at 776.

219. *Id.* at 871, 503 N.E.2d at 777.

220. *Id.* at 871, 503 N.E.2d at 776.

Kondourajian filed suit for recovery under the policy on June 28, 1985.²²¹

The *Kondourajian* court held that Kondourajian's action was time barred even after accounting for the tolling period mandated by section 143.1.²²² The court determined that Kondourajian should have brought his action by February 22, 1985.²²³ In so holding, the court rejected the trial court's conclusion that the policy language merely required the commencement of a suit under the policy within twelve months following the insured's filing of sworn proof of loss.²²⁴

Wilson, Village of Lake, Davis, and Kondourajian indicate that the courts will enforce clear contractual time limitations upon the ability of insureds to bring suits against their insurers. Contractual limitations are as fundamental a consideration for insureds and their counsel as are statutes of limitation.

III. OBTAINING AND CANCELLING COVERAGE

A. Retroactive Cancellation by the Insured

In *Jadczak v. Modern Service Insurance Co., Inc.*,²²⁵ the First District considered whether cancellation by an insured may be effective retroactively. The plaintiffs in *Jadczak* were a permissive user of, and passengers in, an automobile that Modern Service had insured on behalf of the owner.²²⁶ The plaintiffs were involved in an accident on February 7, 1982, with an uninsured motorist and sought uninsured motorist benefits under the owner's policy.²²⁷ The automobile in which they were riding was purchased three days before the accident by the owner's husband. The owner had obtained insurance coverage for the car from Modern Service at

221. *Id.*

222. *Id.* at 872, 503 N.E.2d at 777. For the statutory language regarding tolling, see *supra* note 205 and accompanying text.

223. *Kondourajian*, 151 Ill. App. 3d at 872, 503 N.E.2d at 777.

224. *Id.* at 871, 503 N.E.2d at 776.

225. 151 Ill. App. 3d 589, 503 N.E.2d 794 (1st Dist. 1987), *cert. denied*, 115 Ill. 2d 541, 511 N.E.2d 429 (1987).

226. *Id.* at 592, 503 N.E.2d at 796. The court determined *Jadczak* was the permissive user under the initial permission rule. This rule provides that if permission has been given to the first permittee, further grants of permission to subsequent users do not have to be shown. *Jadczak* sold the car to a purchaser who bought the car for his wife's ownership. The purchaser returned the car to *Jadczak* for repairs on February 5, 1982, the day after he had purchased it. The court determined that the purchaser had his wife's permission to use the car and, thus, according to the initial permission rule, *Jadczak* had permission to use the car. *Id.* at 595, 503 N.E.2d at 798.

227. *Id.* at 592, 503 N.E.2d at 796.

the time of purchase.²²⁸ Three days after the accident, the owner telephoned Modern Service and cancelled the policy effective February 5, 1982.²²⁹ The plaintiffs sought a declaration regarding Modern Service's obligation to provide uninsured motorist coverage.²³⁰ In addition to contending that the vehicle was not "owned" and the plaintiffs were not permissive users, Modern Service argued that the cancellation was effective as requested on February 5, 1982.²³¹ Modern Service contended that because the insured requested the cancellation, the cancellation was effective.²³²

The *Jadcak* court held that the policy provided coverage to the plaintiffs at the time of the accident and expressly rejected Modern Service's cancellation argument.²³³ Although the court recognized that insurers and insureds may agree to cancellation, the court held they may not do so after the loss has already occurred.²³⁴

B. Life Insurance Cancellation

In *Meehan v. Transamerica Occidental Life Insurance Co.*,²³⁵ the Appellate Court for the Fourth District dealt with a unique cancellation issue. William Meehan, the plaintiff, had taken out several life insurance policies on his life issued by Transamerica Occidental Life Insurance Company ("Transamerica").²³⁶ The primary beneficiary under these policies was Meehan's wife, and the secondary beneficiaries were their children.²³⁷ Meehan gave these policies to his wife and relinquished all his ownership rights under the policies.²³⁸ After receipt of the policies, Meehan's wife paid the pol-

228. *Id.*

229. *Id.* The purchaser testified that he urged his wife to cancel the policy. The purchaser wanted the policy cancelled because he feared he would be bound to purchase a destroyed automobile. Other testimony in the record indicated the purchaser feared he might lose his house. *Id.*

230. *Id.* at 592-93, 503 N.E.2d at 796.

231. *Id.* at 593-95, 503 N.E.2d at 797-98.

232. *Id.* at 595, 503 N.E.2d at 798.

233. *Id.* at 596, 503 N.E.2d at 798-99.

234. *Id.* at 596, 503 N.E.2d at 798. In so holding, the *Jadcak* court distinguished *Copley v. Pekin Ins. Co.*, 111 Ill. 2d 76, 488 N.E.2d 1004 (1986). In *Copley*, the court stated that "[g]enerally, contracts can be cancelled by mutual consent of the parties to the contract." *Copley*, 111 Ill. 2d at 86, 488 N.E.2d at 1009 (citing *Volk v. Kendall*, 71 Ill. App. 3d 211, 389 N.E.2d 697 (3d Dist. 1979)). The *Jadcak* court noted that in contrast to the facts with which it was dealing, *Copley* involved a cancellation before the property loss occurred. *Jadcak*, 151 Ill. App. 3d at 596, 503 N.E.2d at 798.

235. 148 Ill. App. 3d 477, 499 N.E.2d 602 (5th Dist. 1986).

236. *Id.* at 478, 499 N.E.2d at 603.

237. *Id.*

238. *Id.*

icy premiums.²³⁹ On December 17, 1980, Meehan's wife was convicted of attempting to murder Meehan.²⁴⁰ After her conviction, Meehan attempted to cancel the life insurance policies he had given to his wife. Both Transamerica and the trial court refused to comply with his request.²⁴¹

On appeal, Meehan contended that cancellation should be allowed for public policy reasons.²⁴² Meehan argued that allowing someone to hold an insurance policy insuring a life that the policyholder has no interest in seeing continue would encourage illegal activity.²⁴³ Moreover, Meehan contended that when continuation of a life insurance policy endangers the very life it purports to insure, the insured individual should be able to cancel the policy.²⁴⁴

The *Meehan* court disagreed with these arguments and refused to cancel the policies.²⁴⁵ The court concluded there was no reason to believe that, based upon a prior attempt on Meehan's life and the existence of life insurance policies naming her as a beneficiary, his wife would attempt to murder him again in the hope of collecting the insurance proceeds.²⁴⁶ The court noted that Meehan's contention that his life would be in danger in the future failed to take into account the "rehabilitative value" of criminal conviction and sentencing.²⁴⁷ The court also noted that the threat posed by his wife while the policies remained in force is insignificant because the law would prohibit recovery for any beneficiary who killed the insured.²⁴⁸ The court determined also that various other policy concerns supported its refusal to allow cancellation by Meehan.²⁴⁹ The *Meehan* decision makes it difficult to conceive of a possible fact situation where an insured who is not also a policy owner may cancel a life insurance policy without the policy owner's consent.

239. *Id.*

240. *Id.*

241. *Id.* at 478-79, 499 N.E.2d at 603.

242. *Id.* at 479, 499 N.E.2d at 604.

243. *Id.*

244. *Id.*

245. *Id.* at 479-80, 499 N.E.2d at 604.

246. *Id.* at 480, 499 N.E.2d at 604.

247. *Id.*

248. *Id.*

249. *Id.* The court noted policy concerns including disruptive litigation of life insurance policies and similar instruments such as wills that would undermine their stability, and the destruction of beneficiary rights of innocent third parties such as Meehan's children. *Id.*

IV. INSURANCE DEFINED

The Appellate Court for the First District had the opportunity to distinguish insurance contracts from service or warranty contracts in *Griffin Systems, Inc. v. Washburn*.²⁵⁰ In *Griffin Systems*, the Illinois Department of Insurance issued a cease and desist order against Griffin Systems for selling insurance in Illinois without authorization.²⁵¹ Griffin Systems had been marketing "mechanical service contracts" in Illinois since 1984.²⁵² In exchange for money, Griffin Systems would agree to repair or replace automobile parts specified in the contract if they failed to function during the period of the contract.²⁵³ The contracts contained exclusions and limitations as well as a twenty-five dollar deductible per part.²⁵⁴ If a covered part failed, the insured was required to file a claim with Griffin Systems, who would refer it to outside adjustors for evaluation.²⁵⁵ Upon approval by the adjustors, a facility of the automobile owner's choice would repair the vehicle.²⁵⁶

Griffin Systems appealed the cease and desist order contending that its contracts were service contracts and not insurance policies over which the Insurance Department could exercise regulatory authority.²⁵⁷ The *Griffin Systems* court disagreed and held that the contracts were insurance contracts and that the cease and desist order was valid.²⁵⁸ In support of its holding, the court devised a four-prong test based upon the Illinois common law definition of "insurance" to determine whether a contract is an insurance policy.²⁵⁹ These four prongs are: "(1) a contract . . . for a specific period of time; (2) an insurable interest . . . possessed by the insured; (3) consideration in the form of a premium paid by the in-

250. 153 Ill. App. 3d 113, 505 N.E.2d 1121 (1st Dist. 1987).

251. *Id.* at 114, 505 N.E.2d at 1122-23.

252. *Id.* at 115, 505 N.E.2d at 1123.

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.* at 119, 505 N.E.2d at 1125.

259. *Id.* at 116-17, 505 N.E.2d at 1123-24. The *Griffin Systems* court relied upon two decisions for the definition of insurance. *Barnes v. People ex. rel. Moloney*, 168 Ill. 425, 48 N.E. 91 (1897); *Continental Casualty Co. v. Fleming*, 46 Ill. App. 2d 276, 197 N.E.2d 88 (4th Dist. 1964). The *Griffin Systems* court quoted *Fleming*, which described insurance as follows: "A contract of indemnity by which the insurer . . . undertakes to indemnify the insured against pecuniary loss arising from the destruction of, or injury to, the insured's property. . . . The essence of the contract is indemnity against loss." *Griffin Systems*, 153 Ill. App. 3d at 116, 505 N.E.2d at 1123 (quoting *Fleming*, 46 Ill. App. 2d at 284, 197 N.E.2d at 92).

sured to the insurer; and (4) the insurer agrees to indemnify the insured for . . . pecuniary loss to the insured's property resulting from . . . specified perils."²⁶⁰

The court applied these four criteria to Griffin Systems' contracts and determined that they were insurance policies.²⁶¹ The court noted that the contracts were issued for specific time periods, had an insurable interest represented by the covered mechanical parts, required payment of a premium, and obligated Griffin Systems to indemnify the insured for costs involved in the replacement or repair of the covered parts.²⁶² The court considered additional features of the contracts such as a twenty-five dollar deductible, claims adjustment, and independent repair as indicative of their insurance features.²⁶³ The court noted that service contracts or warranties are distinct from insurance contracts.²⁶⁴ The court explained that companies that manufacture or sell the product they are agreeing to replace or repair issue warranties or service contracts.²⁶⁵ Griffin Systems neither sold nor manufactured the products that they promised to replace or repair.²⁶⁶ Griffin, therefore, was not guaranteeing the performance of its own product. Instead, Griffin sold indemnity agreements based on insurance principles.²⁶⁷ The *Griffin Systems* decision, therefore, is instructional because it provides clear guidance in distinguishing insurance contracts from warranty contracts.

V. THE INSURER'S CONDUCT

A. Settlement Practices

During the *Survey* period, the Appellate Court for the First Dis-

260. *Griffin Systems*, 153 Ill. App. 3d at 116, 505 N.E.2d at 1123-24.

261. *Id.* at 116-17, 505 N.E.2d at 1124.

262. *Id.*

263. *Id.* at 118-19, 505 N.E.2d at 1125.

264. *Id.* at 117-18, 505 N.E.2d at 1124.

265. *Id.* at 118, 505 N.E.2d at 1124. The court cited *GAF Corp. v. County School Bd. of Wash. County*, 699 F.2d 981 (4th Cir. 1980), *Rayos v. Chrysler Credit Corp.*, 683 S.W.2d 546 (Tex. Ct. App. 1985), and *Guaranteed Warranty Corp., Inc. v. Humphrey*, 23 Ariz. App. 327, 533 P.2d 87 (1975), in support of this proposition. *Griffin Systems*, 153 Ill. App. 3d at 117, 505 N.E.2d at 1124.

266. *Griffin Systems*, 153 Ill. App. 3d at 118, 505 N.E.2d at 1125.

267. *Id.* In so holding, the *Griffin Systems* court distinguished *Vredenburgh v. Physicians Defense Co.*, 126 Ill. App. 509 (1906). *Vredenburgh* involved an agreement whereby an incorporated group of attorneys agreed to represent certain physicians in any medical malpractice action brought against the physicians. The physicians paid an annual retainer fee for the service. *Vredenburgh*, 126 Ill. App. at 509-11. The *Griffin Systems* court distinguished *Vredenburgh* because an attorney retainer arrangement does not involve indemnity for losses. *Griffin Systems*, 153 Ill. App. 3d at 118, 505 N.E.2d at 1125.

strict determined whether insurers have an obligation to consider the insured's interests when settling a claim within the policy deductible. In *Casualty Insurance Co. v. Town & Country Pre-School Nursery, Inc.*,²⁶⁸ the court held the insurer has no such duty.

The underlying action involved the injury of a child on Town and Country's premises.²⁶⁹ Town & Country's insurer, Casualty Insurance, settled the resulting claim for \$1,800, \$200 under the policy deductible amount.²⁷⁰ In accordance with this deductible, Casualty Insurance sought reimbursement from Town & Country for the \$1,800 expended in its behalf.²⁷¹ Town & Country refused to pay, and Casualty Insurance filed suit for reimbursement of the settlement amount.²⁷² In its defense, Town & Country argued that a settlement within the deductible falls outside the policy limits like a settlement beyond the policy limits.²⁷³ Consequently, Town & Country contended that the insurer may not settle within the deductible without considering the insured's interests.²⁷⁴

The appellate court disagreed with Town & Country's contentions and determined that the policy language clearly gave the insurer the right to settle a claim within the deductible without the insured's consent.²⁷⁵ The court held that, according to the policy

268. 147 Ill. App. 3d 567, 498 N.E.2d 1177 (1st Dist. 1986).

269. *Id.* at 568, 498 N.E.2d at 1177.

270. *Id.* The policy provided bodily injury coverage of \$1,000,000 per occurrence with a \$2,000 deductible per claim. *Id.*

271. *Id.*

272. *Id.*

273. *Id.* at 569, 498 N.E.2d at 1178. Town & Country sought to have the court apply the Illinois rule that recognizes an insurer's duty to give its insured's interests at least equal consideration to its own when, in the exercise of its contractual rights to settle on behalf of the insured, the insurer consents to a settlement beyond the limits of the insured's policy. See e.g., *Adduci v. Vigilant Ins. Co.*, 98 Ill. App. 3d 472, 424 N.E.2d 645 (1st Dist. 1981); *Cernocky v. Indemnity Ins. Co. of North America*, 69 Ill. App. 3d 196, 216 N.E.2d 198 (1st Dist. 1966).

274. *Town & Country*, 147 Ill. App. 3d at 569, 498 N.E.2d at 1178.

275. *Id.* at 569-70, 498 N.E.2d at 1178-79. The portions of the policy the court found relevant provided: "the company shall have the right and duty to defend any suit against the insured . . . and may make such investigation and settlement of any claim as it deems expedient." The deductible portion of the policy provided:

1. The company's obligation . . . to pay damages on behalf of the insured applies only to the amount of damages in excess of any deductible amounts stated in the schedule above as applicable to such coverages. . . .

. . . .

4. The terms of the policy, including those with respect to (a) the company's right and duties with respect to the defense of suits and (b) the insured's duties in the event of the occurrence apply irrespective of the application of the deductible amount.

5. The company may pay any part or all of the deductible amount and, upon notification of the action taken, the named insured shall promptly reimburse the

language, this settlement right applies regardless of the deductible amount.²⁷⁶ In addition, the insured shall be liable to reimburse the insurer for settlement payment by the insurer of any or all of the deductible amount.²⁷⁷ The court held that the policy terms were "clear and enforceable" and, absent allegations by the insured that it was in an unequal bargaining position, the insurer could settle any claim within the deductible regardless of the interests of the insured.²⁷⁸ In reaching this decision, the *Town & Country* court has recognized that the insurer's duty to consider its insured's interests when settling beyond the policy limits has no application to the insurer's right to settle within the policy limits.

B. Subrogation

According to section 143b of the Illinois Insurance Code, when an insurer recovers on a subrogated automobile collision claim, the insurer must reimburse the insured a pro rata share of its deductible from the net recovery. The insurer, however, may deduct any incurred expenses from this sum.²⁷⁹ In *Morel v. Coronet Ins. Co.*,²⁸⁰ the Illinois Supreme Court defined incurred expenses to include, in certain circumstances, attorney's fees paid to a law firm on a retainer basis.²⁸¹

In *Morel*, the plaintiff damaged his vehicle in an automobile accident and sought coverage from his insurer, Coronet.²⁸² Coronet

company for such part of the deductible amount as has been paid by the company.

Id. at 570, 498 N.E.2d at 1178.

276. *Id.* at 569-70, 498 N.E.2d at 1178-79 (citing *Orion Insurance Co. v. General Electric Co.*, 129 Misc. 2d 466, 493 N.Y.S.2d 397 (N.Y. Sup. Ct. 1985); and *Marginian v. Allstate Ins. Co.*, 18 Ohio St. 3d 345, 481 N.E.2d 600 (1985)).

277. *Town & Country*, 147 Ill. App. 3d at 570, 498 N.E.2d at 1179.

278. *Id.*

279. ILL. REV. STAT. ch. 73, para. 755b (1985). The statute provides in relevant part:

Any insurance carrier whose payment is reduced by a deductible amount under . . . collision coverage is subrogated to its insured's entire collision loss claim including the deductible amount . . . if the deductible amount has been . . . recovered by the insured it shall not be included in the subrogated loss claim and . . . the amount of loss pleaded. If the deductible amount is included in the subrogated loss claim the insurance carrier shall pay the full pro rata deductible share to its insured out of the net recovery on the subrogated claim. Administrative expenses of the insurance carrier cannot be deducted from the gross recovery, and only incurred expenses of the carrier, such as attorney's fees, collection fees and adjuster's fees, may be deducted therefrom. . . .

Id.

280. 117 Ill. 2d 18, 509 N.E.2d 996 (1987).

281. *Id.* at 26-27, 509 N.E.2d at 1000.

282. *Id.* at 20, 509 N.E.2d at 997.

paid for all but two hundred and fifty dollars of the plaintiff's damages. This amount represented the deductible portion of the plaintiff's collision coverage.²⁸³ Coronet then engaged a law firm with which it had a retainer agreement²⁸⁴ to exercise Coronet's subrogation rights against the motorist with whom the plaintiff collided.²⁸⁵ The law firm recovered a sum from the other motorist in excess of the deductible²⁸⁶ and paid the plaintiff his pro rata share of the deductible amount less the sum of \$66.66 as alleged "incurred expenses" which Coronet attributed to "attorney fees."²⁸⁷ The plaintiff brought an individual and class action against Coronet contending that the law firm's relationship with Coronet was that of "house counsel."²⁸⁸ Thus, the plaintiff contended, Coronet's annual retainer payments to the law firm were an administrative expense and not deductible from the insured's recovery according to the terms of section 143b.²⁸⁹ According to the plaintiff, the sum deducted had no logical relationship to the time or effort expended by the lawyers in pursuit of recovery against the other motorist.²⁹⁰

The Illinois Supreme Court held that nothing inherent in the retainer relationship indicated that the fees paid to the retained firm were administrative as opposed to incurred expenses.²⁹¹ The court defined "administrative expenses" as expenses of an insurer that are general expenses constituting normal costs of doing business and unrelated to a specific claim.²⁹² "Incurred expenses," the court stated, are an insurer's out-of-pocket expenses specifically associated with a claim.²⁹³ Accordingly, whether the insurer pays a law firm case by case or with a retainer is unimportant so long as the insurer can show that the sum deducted for an incurred ex-

283. *Id.*

284. *Id.* Under the retainer arrangement, the insurer paid an annual retainer fee to the law firm. This fee was adjusted annually according to the number of cases the firm handled. The firm did not bill on an hourly, contingent, or case-by-case basis. *Id.*

285. *Id.* at 20-21, 509 N.E.2d at 997.

286. *Id.* at 21, 509 N.E.2d at 997. The plaintiff's deductible was \$250.00 and the amount the insurer's firm recovered was \$272.71. This amount constituted eighty percent of the total property damage the insured suffered. Consequently, pursuant to section 143b, the insurer determined the insured was entitled to eighty percent of the \$250.00 deductible amount (or \$200.00). The insurer deducted the \$66.66 from the \$200.00 as incurred expenses. *Id.*

287. *Id.*

288. *Id.* at 23, 509 N.E.2d at 998.

289. *Id.* at 21-22, 509 N.E.2d at 997-98.

290. *Id.* at 23, 509 N.E.2d at 998.

291. *Id.* at 25-26, 509 N.E.2d at 999-1000.

292. *Id.* at 25, 509 N.E.2d at 999.

293. *Id.*

pense is specifically related to the individual insured's claim.²⁹⁴ The court noted that an arbitrary figure chosen as a means to defray general legal expenses is not an incurred expense.²⁹⁵ Although this decision clearly indicates that retainer arrangements may comprise "incurred expenses" within the meaning of section 143b, it remains to be seen how insurers will meet the evidentiary burden outlined by the supreme court.

VI. UNINSURED AND UNDERINSURED MOTORIST COVERAGE

A. Settlement

On January 1, 1985, the Illinois Insurance Code was amended by the addition of section 155a-2(7).²⁹⁶ Section 155a-2(7) prohibits insurers from exercising their subrogation rights under underinsured motorist coverage when the underinsured motorist has made a settlement offer, unless the insurer advances the settlement amount to its insured.²⁹⁷ The statute addresses the "catch-22" in which injured motorists found themselves when an underinsured motorist made a settlement offer.²⁹⁸ Typically, the injured motorist's insurer did not allow the insured to accept the offer because acceptance by the insured would prejudice the insurer's subrogation rights. Nonetheless, the insured would not be entitled to underinsured motorist benefits until the insured settled with or received a judgment against the underinsured motorist.²⁹⁹

In *Boyd v. Madison Mutual Insurance Co.*,³⁰⁰ the Illinois Supreme Court determined whether section 155a-2(7) applies retroactively to policies issued before January 1, 1985.³⁰¹ In *Boyd*, the plaintiff, Boyd, sustained injury as a result of an accident with an

294. *Id.* at 26, 509 N.E.2d at 1000. Consistent with this finding, the court remanded the case stating that the "insurer must . . . establish . . . that it paid its attorneys at least \$90.89 in connection with the plaintiff's claim under the fee agreement." *Id.*

295. *Id.* at 26, 509 N.E.2d at 999.

296. ILL. REV. STAT. ch. 73, para. 755a-2(7) (1985). This statute provides:

No insurer shall exercise any right of subrogation under a policy providing additional uninsured motorist coverage against an underinsured motorist where the insurer has been provided with written notice in advance of a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured, in an amount equal to the tentative settlement, within 30 days following receipt of such notice.

Id.

297. *Id.*

298. *Boyd v. Madison Mutual Ins. Co.*, 116 Ill. 2d 305, 309, 507 N.E.2d 855, 857 (1987).

299. *Id.*

300. 116 Ill. 2d 305, 507 N.E.2d 855 (1987).

301. *Id.* at 309, 507 N.E.2d at 857.

underinsured motorist on February 23, 1984.³⁰² Boyd brought an action against the underinsured motorist, and the underinsured motorist's insurer offered the fifteen thousand dollar policy limits in exchange for a release.³⁰³ Madison Mutual Insurance Company ("Madison Mutual"), Boyd's insurer, refused to accept the settlement offer and, as a result, the plaintiff sought a declaratory judgment in June of 1985.³⁰⁴ Although Boyd's policy was issued before the effective date of section 155a-2(7), Boyd contended that the new law should apply to the case.³⁰⁵ In support of this argument, Boyd argued that the statute was remedial in nature and procedural in effect and, thus, was to be applied retroactively.³⁰⁶

The Illinois Supreme Court held that constitutional restrictions prohibited the retroactive application of section 155a-2(7).³⁰⁷ In so holding, the court noted that laws that could impair pre-existing contractual rights and obligations must be applied prospectively to protect constitutional rights.³⁰⁸ The court further noted that requiring insurers to match settlement offers by underinsured motorists under policies issued prior to the adoption of section 155a-2(7) would create substantial, new, obligations for which the parties had not bargained and would impair substantial pre-existing contract rights.³⁰⁹ Thus, the court held that retrospective application of section 155a-2(7) would be unconstitutional.³¹⁰

B. *Physical Contact as a Condition Precedent to Recovery*

*Hartford Accident & Indemnity Co. v. LeJeune*³¹¹ presented the Illinois Supreme Court with another opportunity³¹² to refine the parameters of the physical contact requirement for the recovery of

302. *Id.* at 307, 507 N.E.2d at 856.

303. *Id.* at 308, 507 N.E.2d at 856.

304. *Boyd v. Madison Mutual Ins. Co.*, 146 Ill. App. 3d 420, 496 N.E.2d 255 (5th Dist. 1986).

305. *Boyd*, 116 Ill. 2d at 308, 507 N.E.2d at 856.

306. *Id.* at 308-09, 507 N.E.2d at 856-57. *See generally* *Maiter v. Chicago Bd. of Educ.*, 82 Ill. 2d 373, 415 N.E.2d 1034 (1980), *cert. denied*, 451 U.S. 921 (1981); and *Orlicki v. McCarthy*, 4 Ill. 2d 342, 122 N.E.2d 342 (1954); *but c.f.* *Hogan v. Bleeker*, 29 Ill. 2d 181, 193 N.E.2d 844 (1963) (procedural or remedial statutes are not applied retroactively when to do so would deprive one of vested property rights).

307. *Boyd*, 116 Ill. 2d at 310, 507 N.E.2d at 857.

308. *Id.*

309. *Id.*

310. *Id.*

311. 114 Ill. 2d 54, 499 N.E.2d 464 (1986).

312. *See generally* *Lemke v. Kenilworth Ins. Co.*, 109 Ill. 2d 350, 487 N.E.2d 943 (1985); *Finch v. Central Nat. Ins. Group*, 59 Ill. 2d 123, 319 N.E.2d 468 (1974); and *Ferega v. State Farm Mut. Auto. Ins. Co.*, 58 Ill. 2d 109, 317 N.E.2d 550 (1974).

damages under uninsured motorist provisions.³¹³ In *LeJeune*, an unidentified motorist struck a vehicle which struck the insured's vehicle.³¹⁴ The uninsured motorist portion of the insured's policy provided coverage in the event an uninsured motor vehicle "hit" the insured.³¹⁵ The insurer, Hartford Accident & Indemnity Company ("Hartford"), sought a declaratory judgment that the insured was not "hit" by the unidentified vehicle and, thus, uninsured motorist coverage was unavailable.³¹⁶

The supreme court held that the physical contact requirement for uninsured motorist coverage is met when an unidentified vehicle strikes another vehicle forcing that vehicle into contact with the insured's vehicle.³¹⁷ The supreme court noted that Illinois law³¹⁸ considers the physical contact rule satisfied when a direct and contemporaneous causal connection exists between the insured vehicle and the unidentified vehicle.³¹⁹ When the direct causal connection exists, the policy concerns underlying the physical contact rule are met.³²⁰ The court, however, concluded that to satisfy the physical contact rule's policy concerns, the actual occurrence of the hit must be proved.³²¹ Accordingly, the court remanded the case for further proceedings.³²²

313. *Lejeune*, 114 Ill. 2d at 56, 499 N.E.2d at 465.

314. *Id.* at 56, 499 N.E.2d at 464.

315. *Id.* at 56, 499 N.E.2d at 465.

316. *Id.*

317. *Id.* at 59, 499 N.E.2d at 466. In so holding, the court noted that the majority of those jurisdictions that had considered this issue reached similar conclusions. *Id.* at 57-58, 499 N.E.2d at 465. The court cited *State Farm Mut. Auto Ins. Co. v. Spinola*, 374 F.2d 873 (5th Cir. 1967); *Inter-Insurance Exchange v. Lopez*, 238 Cal. App. 2d 441, 47 Cal. Rptr. 832 (1965); *Springer v. Government Employees Ins. Co.*, 22 Mich. App. 669 (1970); *Spaulding v. State Farm Mut. Ins. Co.*, 262 S.C. 95, 202 S.E.2d 653 (1974); *Latham v. Mountain States Mut. Casualty Co.*, 482 S.W. 2d 655 (Tex. Civ. App. 1972); and *Johnson v. State Farm Mut. Auto. Ins. Co.*, 20 Wash. 2d 587, 424 P.2d 648 (1967). *Lejeune*, 114 Ill. 2d at 57-58, 499 N.E. 2d at 465.

318. *Lejeune*, 114 Ill. 2d at 57-58, 499 N.E.2d at 465. The court cited *Illinois National Ins. Co. v. Palmer*, 116 Ill. App. 3d 1067, 452 N.E.2d 707 (1st Dist. 1983). In *Palmer*, the court held that the insured's uninsured motorist coverage encompassed damage resulting from a lug nut that flew off an unidentified vehicle. In such circumstances, the *Palmer* court held, the physical contact requirement is met. *Palmer*, 116 Ill. App. 3d at 1068-69, 452 N.E.2d at 708.

319. *LeJeune*, 114 Ill. 2d at 59, 499 N.E.2d at 466. Again the *LeJeune* court cited *Illinois National Ins. Co. v. Palmer*, 116 Ill. App. 3d 1067, 452 N.E.2d 707 (1st Dist. 1983). According to *Palmer*, the physical contact rule is intended to reduce the chance that insureds will make fraudulent uninsured motorist claims by claiming damage was caused by a hit-and-run vehicle when, in fact, the accident was the result of the insured's own error. *Palmer*, 116 Ill. App. 3d at 1069, 452 N.E.2d at 708.

320. *LeJeune*, 114 Ill. 2d at 59, 499 N.E.2d at 466.

321. *Id.*

322. *Id.* In a concurring opinion Justice Ryan noted that the policy language used by

C. The Owned Vehicle Exclusion

On July 1, 1983, section 143a-2(5) of the Illinois Insurance Code became law. That section requires automobile liability insurers to provide underinsured motorist benefits in an amount equal to uninsured motorist benefits.³²³ In *Hettenhausen v. Economy Fire & Casualty Co.*,³²⁴ the Appellate Court for the First District became the first court of review to interpret section 155a-2(5) as applied to an owned vehicle exclusion to underinsured motorist coverage.³²⁵

In *Hettenhausen*, the plaintiff's decedent died in an accident with an underinsured motorist.³²⁶ The decedent had underinsured motorist coverage of \$100,000 per person and \$300,000 per occurrence with an exclusion for injury sustained while occupying a vehicle owned by the insured, but not insured under the policy.³²⁷ Economy Fire and Casualty Company ("Economy") denied underinsured motorist coverage because the insured's policy did not cover the motor vehicle that the insured was driving.³²⁸ Economy argued that the public policy considerations that void "owned vehicle" exclusions regarding uninsured motorist coverage do not apply to underinsured motorist coverage.³²⁹ Nonetheless, the trial

the insurer in *Boyd* was distinct from typical uninsured motorist policy language which merely requires "physical contact." Justice Ryan then cautioned that attempts by insurers to draft policy language denying uninsured motorist coverage in the event of indirect physical contact as in *Boyd* would be void as against public policy. *Id.* at 59-61, 499 N.E.2d at 466-67.

323. ILL. REV. STAT. ch. 73, para. 755a-2(5) (1985). This statute provides:

On or after July 1, 1983, no policy insuring against loss resulting from liability . . . for bodily injury or death . . . arising out of the ownership, maintenance or use of a motor vehicle shall be renewed or delivered or issued . . . unless underinsured motorist coverage is included in such policy in an amount at least equal to the total amount of uninsured motorist coverage provided in that policy where such uninsured motorist coverage exceeds the limits set forth in Section 7-203 of the Illinois Vehicle Code.

Id.

324. 154 Ill. App. 3d 488, 507 N.E.2d 121 (1st Dist. 1987).

325. *Id.* at 492, 507 N.E.2d at 124.

326. *Id.* at 490, 507 N.E.2d at 122. The underinsured motorist had an automobile policy with limits of \$25,000 per person and \$50,000 per occurrence. *Id.*

327. *Id.*

328. *Id.* at 490, 507 N.E.2d at 123.

329. *Id.* at 491, 507 N.E.2d at 123. The *Hettenhausen* court quoted the policy concerns as stated in *Squire v. Economy Fire & Cas. Co.*, 69 Ill. 2d 167, 370 N.E.2d 1044 (1977) as follows: "[T]he purpose of [the statute mandating uninsured motorist coverage] is to place the policyholder in substantially the same position he would occupy, so far as his being injured or killed is concerned, if the wrongful driver had . . . minimum liability insurance [coverage]." *Hettenhausen*, 154 Ill. App. 3d at 491, 507 N.E.2d at 124. The *Squire* court held the owned vehicle exclusion invalid as to uninsured motorist coverage. *Squire*, 69 Ill. 2d at 179, 370 N.E.2d at 1049.

court granted the plaintiff's motion for summary judgment.³³⁰

The appellate court determined that the public policy concerns underpinning uninsured motorist coverage are similar to the policy concerns underpinning underinsured motorist coverage.³³¹ As in the context of uninsured motorist coverage, allowance of the exclusion would thwart the legislative purpose of mandatory underinsured motorist benefits.³³² Therefore, the court held that the "owned vehicle" exclusion is unenforceable in the context of underinsured motorist coverage.³³³

The court determined that section 143-2(5) was made law because the legislature thought, in the absence of universally mandatory automobile liability insurance, underinsured coverage was coverage that should be provided to all insured motorists.³³⁴ The court concluded based on the definition of "underinsured motorist" in the insurance code,³³⁵ that underinsured motorist coverage "protects the insured [driver] against the risk of a lesser recovery if injured by an insured driver rather than by an uninsured driver."³³⁶ The "owned vehicle" exclusion, as applied to underinsured motorist coverage, would deny coverage that would otherwise be available had the insured been involved in a collision with an uninsured motorist. Therefore, the "owned vehicle" exclusion is in conflict with the intent of section 155a-2(5).³³⁷ In reaching this decision, the *Hettenhausen* court has expanded the application of the Illinois Supreme Court's ruling in *Squire v. Economy Fire & Casualty Co.*³³⁸

D. Subrogation

The Appellate Court for the Fourth District determined

330. *Hettenhausen*, 154 Ill. App. 3d at 492, 507 N.E.2d at 123.

331. *Id.* at 492-93, 507 N.E.2d at 123-25.

332. *Id.* at 493, 507 N.E.2d at 125.

333. *Id.* at 492-93, 507 N.E.2d at 124-25.

334. *Id.* at 493, 507 N.E.2d at 124.

335. ILL. REV. STAT. ch. 73, para. 755a-2(3) (1985). "Underinsured motor vehicle" is defined as a vehicle:

whose ownership, maintenance or use has resulted in bodily injury or death of the insured . . . and for which the sum of the limits of liability under all . . . policies . . . applicable to the driver or to the person . . . legally responsible for such vehicle . . . is less than the limits for underinsured coverage provided the insured. . . .

Id.

336. *Hettenhausen*, 154 Ill. App. 3d at 493, 507 N.E.2d at 125 (citing *Price v. State Farm Mut. Auto. Ins. Co.*, 116 Ill. App. 3d 463, 452 N.E.2d 49 (1st Dist. 1983)).

337. *Hettenhausen*, 154 Ill. App. 3d at 492, 507 N.E.2d at 125.

338. For the *Squire* ruling, see *supra* note 329.

whether, when an insurer has paid uninsured motorist benefits to its insured before a court renders a judgment against the uninsured motorist, the insurer may undertake an indemnification or contribution action directly against a potential insurer of the uninsured motorist. In *Pekin v. Cincinnati Insurance Co.*,³³⁹ the court held an insurer could not seek indemnification or contribution in these circumstances.³⁴⁰

In the underlying action, Pekin's insured suffered an injury while riding as a passenger in an automobile driven by another.³⁴¹ The driver had taken the car from his mother without her permission.³⁴² Consequently, when the passenger brought suit against the driver, Cincinnati Insurance Company ("Cincinnati"), the mother's insurer, defended under a reservation of rights.³⁴³ At the time, Pekin advanced fifty thousand dollars to its insured under the uninsured motorist portion of the policy and sought reimbursement from Cincinnati.³⁴⁴ Cincinnati countered with a declaratory action against Pekin to resolve the coverage issue.³⁴⁵ Subsequently, Pekin's insured voluntarily dismissed the suit against the driver. Cincinnati then voluntarily dismissed its action for declaratory judgment.³⁴⁶ In response to these events, Pekin sought a declaratory judgment requiring Cincinnati to reimburse Pekin for the fifty thousand dollars in uninsured motorist benefits which it paid its insured.³⁴⁷ The trial court dismissed the action for failure to state a cause of action.³⁴⁸

Despite Pekin's arguments that its complaint stated facts that showed a contribution action existed, the court determined that Pekin's action was one for indemnification.³⁴⁹ The court reached

339. 157 Ill. App. 3d 404, 510 N.E.2d 524 (4th Dist. 1987).

340. *Id.* at 406-07, 510 N.E.2d at 526.

341. *Id.* at 405, 510 N.E.2d at 525.

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.* at 405-06, 510 N.E.2d at 525.

347. *Id.* at 406, 510 N.E.2d at 526.

348. *Id.* at 405, 510 N.E.2d at 525.

349. *Id.* at 406, 510 N.E.2d at 526. The court stated that assuming Pekin's action were a contribution action, it would still fail to state a claim. The court noted that contribution actions require an identity between the policies as applied to the parties and also an identity between the insurable interests and risks. The court determined there was no identity of policies, insurable interest, or risk. In reaching this determination, the court stated that Pekin insured the passenger against uninsured motorists while Cincinnati insured the driver's mother against liability arising from traffic accidents. These differences, the court concluded, would cause Pekin's action to fail if it were a contribution action. *Id.* at 407, 510 N.E.2d at 526-27.

this determination because Pekin sought reimbursement of the full fifty thousand dollars it had paid to its insured and because Pekin's complaint did not mention contribution.³⁵⁰ The court then noted that, as an action for indemnification, Pekin sought the same thing from Cincinnati that it could have recovered if it had sued the driver of the automobile directly.³⁵¹ Such a suit, the court determined, is a direct action against an insurance company for the negligence of its insured before a judgment determining the insured's liability.³⁵² As such, the suit is not actionable for public policy reasons.³⁵³

VII. LEGISLATION

As a result of the liability insurance crisis,³⁵⁴ the legislature passed, and the governor signed into law on September 26, 1986,³⁵⁵ Senate Bill 1200 ("the Act").³⁵⁶ Commonly referred to as the "Tort Reform Act,"³⁵⁷ this legislation contained extensive provisions regarding insurance.³⁵⁸ Among these provisions, Article 10 added section 143.17a³⁵⁹ to the insurance code.

Section 143.17a provides that commercial property and casualty insurers must comply with notice requirements when renewing and

350. *Id.* at 406, 510 N.E.2d at 526.

351. *Id.* at 407, 510 N.E.2d at 526.

352. *Id.*

353. *Id.* (citing *Richardson v. Economy Fire & Cas. Co.*, 109 Ill. 2d 41, 47, 485 N.E.2d 327, 331 (1985); *Marchlik v. Coronet Ins. Co.*, 40 Ill. 2d 327, 332-34, 239 N.E.2d 799, 801 (1968) (the legislature has expressed a policy prohibiting direct actions against insurers before judgment because: (1) only a small minority of states have enacted legislation authorizing direct actions; (2) the Illinois legislature has not enacted a general, statutory authorization of direct actions; and (3) the legislature has enacted a limited authorization of direct actions against insolvent insurers)). See ILL. ANN. STAT. ch. 73, para. 1000 (Smith-Hurd 1987).

354. See P.A. 84-1431, 1986 Ill. Legis. Serv. 270 (West).

355. *Id.* at 356.

356. *Id.* at 270.

357. For an analysis of the tort provisions in the Act, see generally Pope & Freveletti, *Tort Reform Act, 1985-86 Illinois Law Survey*, 18 LOY. U. CHI. L.J. 839 (1986).

358. See P.A. 84-1431, 1986 Ill. Leg. Serv. 270 (West). Aside from the "tort reform," the Act contained provisions regarding: reporting of claim and financial data by property and casualty insurers (Article 8); restrictions upon property and casualty insurers' ability to terminate entire lines of insurance in Illinois (Article 9); termination of commercial property and casualty insurance policies (Article 10); prohibitions against redlining for commercial property and casualty insurance (Article 12); authorization for banks to form risk retention groups (Article 14); a municipal insurance availability program (Article 17); authorization for condominium associations to form risk pooling trusts; and insurance cost containment powers and duties for the director of insurance (Article 25). All of these provisions were effective as of November 25, 1986. Article 10 was effective on January 24, 1987. *Id.*

359. ILL. REV. STAT. ch. 73, para. 755.17a (Supp. 1986).

nonrenewing before policy termination.³⁶⁰ Regarding nonrenewal, the insurer must provide written notice of nonrenewal to the insured at least sixty days prior to the termination date of the policy.³⁶¹ The insurer must also provide a copy of the notice to the insured's broker, agent, and named lienholder or mortgagee.³⁶² The insurer may provide notice of nonrenewal with as little as ten days advance notice in the event the insured fails to pay its premium.³⁶³ The insurer must also provide the insured specific reasons for the nonrenewal.³⁶⁴ Finally, the insurer must provide the insured at least sixty days advance notice when either the renewal premium increase equals or exceeds thirty percent, deductibles are materially changed, or coverage is materially changed.³⁶⁵

In either event, if the insurer fails to provide proper notice, coverage shall not terminate except under specific circumstances.³⁶⁶ If the required notice is provided within at least thirty-one days, but less than sixty days prior to the policy expiration date, the policy shall be extended for sixty days.³⁶⁷ If the required notice is not provided until less than thirty-one days prior to the policy expiration date, the policy shall be extended for a period of one year.³⁶⁸ In no event shall renewal of a commercial property and casualty policy waive or estop an insurer from cancelling policies for conditions that existed before the renewal date of the policy.³⁶⁹

Prior to the enactment of this legislation, commercial insureds had no statutory protection from sudden notices of nonrenewal or increases in renewal premium. As a result, the Act provides commercial insureds a measure of protection from sudden and potentially catastrophic lapses in insurance coverage. Nonetheless, the notice provisions of the Act are so complicated they are certain to give rise to cancellation disputes and litigation.

VIII. CONCLUSION

During the *Survey* year, the Illinois supreme and appellate courts addressed several insurance law issues. The resolution of an

360. *Id.*

361. *Id.*

362. *Id.*

363. *Id.*

364. *Id.*

365. *Id.*

366. *Id.*

367. *Id.*

368. *Id.*

369. *Id.*

insurer's duty to defend upon exhaustion of indemnity limits stands out as the most significant. Nonetheless, the courts also took substantial steps in the areas of exclusions in contribution actions, defining "insurance," affirming the importance of compliance with contractual time limitations, and determining the extent of an insured's right to recover its deductible under auto collision coverage. Moreover, the courts continued to refine the law as applied to uninsured and underinsured motorist coverage.

