

Casualty Matters[®]



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Changing the Rules—State High Courts Redefine Exposures for Commercial and Personal Lines Insurers

by Laura Allison, Mindy Pollack and Maria Slowinski

It is that time of the year when many state legislatures adjourn and state supreme courts issue long-awaited opinions. 2011 is no different.

In areas of pollution exclusions, habitational liability, dram shop/social host liability, and construction defects, among others, we identify a long list of decisions having a major impact on our business. There are a few surprises in the mix, and they both favor and threaten an insurance book of business. We also highlight several pending cases where these state high courts will soon decide important issues, so you can be prepared for possible changes in the future.

The legislature may not be in session, but insurers still need to keep their eyes open. We hope you find this edition of *Casualty Matters* valuable to your work and welcome your inquiries and comments on any topic.

Construction Defects—Alabama—No Coverage for Repairs

The Alabama Supreme Court cleared up the insurance coverage law in that state for carriers and contractors. A claim seeking coverage for repair and replacement of faulty construction—without any damage to other structures or property—is not an occurrence under the GL policy. The high court reviewed the CD coverage issues and other cases in the state, providing insurers with a good sense of what to expect in any coverage litigation. The court did note that damage to personal property or otherwise non-defective portions of the facility could constitute an occurrence. In this case the insured (GC) did not do any work on the premises, and contended that its sub’s faulty work triggered the exception to the “your work” exclusion. The court would not bite, holding that the exclusion only comes into play if there is an occurrence—and there was none alleged here. *Town & Country Property v. Amerisure Ins. Co.*, 2011 Ala. Lexis 183.

Other States—The Alabama approach is similar to that taken in most states ruling on the CD occurrence issue, although the court cites decisions from jurisdictions with even stricter coverage views. In our view, 2011 was the year of CD legislation. Arkansas, Hawaii and South Carolina joined Colorado in enacting laws addressing contractor coverage. These new laws were reviewed in our May 2011 edition of *Casualty Matters*. As of today, we are not aware of more legislation on the horizon but that could change in 2012.



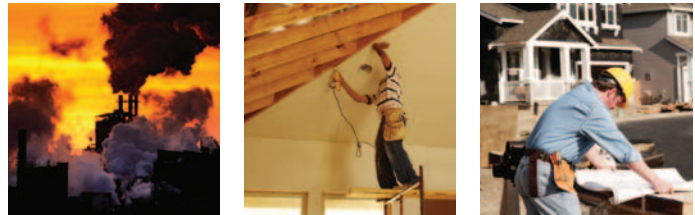
Gen Re Note on Coverage Options: Laws change quickly and often, but underwriting the risk remains the most reliable practice. For example, new ISO and proprietary forms are available to remove the subcontractor exception to the “your work” exclusion—this addresses much of the CD coverage concerns of insurers. (See BP 14 19 01 10, for example.) Carriers can use other ISO forms to designate covered projects, and thereby exclude loss from earlier (or later) work. Commercial umbrella insurers have corresponding endorsement options to align with the primary coverage.

Pollution Exclusion and Occurrence—Illinois—Permitted Activities

Can the emission of chemicals in compliance with government permits constitute pollution and trigger the pollution exclusion? The insured manufacturer had an Illinois EPA (IEPA) permit authorizing emissions under the federal and state clean air laws. After many years, several neighbors sued for personal injuries and property damage caused by the noxious odors and air pollutants, claiming that the insured intended the emissions to occur. First, is an intended and permitted discharge an occurrence under the policy? The court found an occurrence, reasoning that while the emissions were intended, the resulting injury and damage were not. For the same reason, the intentional act exclusion did not apply. What about the

pollution exclusion? Here is the key finding in this case: *The pollution exclusion was “arguably ambiguous as to whether the emission of hazardous materials in levels permitted by an IEPA permit constitute traditional environmental pollution excluded by the policy.”* The insurer had a duty to defend. *Erie Ins. Exchange v. Imperial Marble Corp.*, 2011 Ill. App. LEXIS 1005.

Gen Re Note: Insurers will watch this case closely for appeals. Read the next item for an interesting contrast of outcomes in a similar scenario.



Occurrence and Global Warming—Virginia—Electric Utilities

You might not insure large utilities, but the discussion of occurrence and the environment may still be important to some of your risks. An Alaskan village sued various energy companies for damaging the village by intentionally emitting greenhouse gases. One of the company’s insurers argued that there was no occurrence, and that the pollution exclusion applied. There was no allegation of violation of specific environmental laws or permits. The Virginia Supreme Court ruled that there was no occurrence, based on the principle that an intentional act is neither an occurrence nor an accident. In order to overcome the occurrence hurdle, the insured must show that the alleged injury results from an unforeseen cause or is an unforeseen consequence. In this case, the damage was a natural and probable consequence of the emissions, and hence there is no accident under Virginia law. *AES Corp. v. Steadfast Ins. Co.*, 2011 VA. LEXIS 185.

Gen Re Note: What if the Illinois *Imperial Marble* case had been resolved under Virginia law? The result would probably be different. The takeaway here is that jurisdiction and applicable law matter. Illinois law on pollution coverage favors insureds while Virginia coverage law favors insurers.

> **Drywall and Pollution**—Drywall claims are also testing the reach of pollution exclusions. To date, most of the drywall coverage decisions reflect the pro-insurer view. This is not true in all states. Florida is one state that also interprets the pollution exclusion as written, as per this recent case.

- **Florida**—A federal court applying Florida law held that the pollution exclusion barred coverage of claims against the contractor. In Florida, pollution exclusions are not limited to environmental pollution, and can apply to any loss caused by “a pollutant of any type—household, outdoors, or otherwise.” *Colony Ins. Co. v. Total Contracting & Roofing*, 2010 U.S. Dist. LEXIS 120269.

Gen Re Note: Not all pollution exclusions are the same, and the choice can matter for drywall claims. Increasingly, we see carriers employing a Total Pollution exclusion for their contracting book. A Total Pollution exclusion removes coverage for products-related losses, which can be important in drywall litigation against contractors and other common defendants.

High Court Watch—Pollution Exclusions

- > **Indiana**—In a case with wide interest and repercussions, the issue is whether an earlier ISO Indiana pollution exclusion is ambiguous when applied to pollutants discharged during printing operations. This ruling is expected any day, and could well be released while *Casualty Matters* is being printed. We will report any decision via our *E-News*, due to its expected significance. (*State Automobile Mut. Ins. Co. v. Flexdar*) See sidebar for more.
- > **Virginia**—In a seemingly unrelated case involving contaminated baby formula caused by a leak in a production facility, one issue is whether the manuscripted pollution exclusion should apply only to environmental events. (*PBM Nutritionals v. Lexington Ins. Co.*)
- > **Wisconsin**—In a Homeowners insurance case, the issue is whether the pollution exclusion should apply to contaminants that result from natural processes (in this case, bat guano) or only to industrial waste. (*Hirschhorn v. Auto-Owners Ins. Co.*)

Workers' Comp Exclusions—Pennsylvania—UIM Policies

An unusual UM/UIM policy triggered this case, and its importance to you will depend on your policy wording. Auto insurers are accustomed to Workers' Compensation (WC) offsets from UM and UIM obligations, although Pennsylvania permitted offsets later than most other states. So how did the court view an exclusion stating that UIM coverage does not apply at all to "any claim by anyone eligible for WC benefits"? The policy in question provided coverage to all employees of the insured municipality. The Pennsylvania Supreme Court held that the exclusion rendered coverage illusory, and was therefore unenforceable. It reasoned that the "vast majority" of UIM claims would be made by employees who are also eligible for workers' compensation. However, the exclusion denies protection to anyone injured and eligible for WC benefits. Essentially, the carrier sold a policy to the entity that would not attach by virtue of an exclusion. *Heller v. PA. League of Cities and Municipalities*, 2011 Pa. LEXIS 2521.

Gen Re Note: Most UM/UIM policies do not exclude all coverage for claims involving WC recoveries. Rather, such recoveries offset the UM/UIM benefits. The municipal pool policy may be unique, but if other carriers out there take the same approach, they may find their exclusion of no value—at least in Pennsylvania.

Underwriting Perspective

INDIANA POLLUTION EXPOSURES

Insurers know that the forthcoming *Flexdar* decision may be a game changer in Indiana, but the fact is that insurers have several options available now to underwrite and contain pollution exposures. Here are a few approaches taken by the Bureaus and insurers active in that market, all of which carry over the ISO definition of pollutant but with these additional provisions to supplement that wording:

- > **ISO Indiana Endorsement**—Amendment of Definition of Pollutants—providing a schedule for listing specific materials as pollutants.
- > **Proprietary wording listing several substances** (e.g., motor fuels, lubricants, etc.) within definition of pollutant or scope of exclusion—see the *West Bend Mutual* case from the federal appellate court where this wording worked for the insurer—or see Gen Re's April 2010 *E-News*.
- > **Proprietary wording that incorporates all materials** listed on specific federal and state registers as hazardous substances, for what is probably the most comprehensive solution of all.

These and other wording approaches can be evaluated based on the type of risk. Farm insurers have different wording options available. Both ISO and AAIS exclusions apply whether or not the material is used, or has a function, in the insured's business. (See AAIS BP 0418 07 10, for example.) As we said earlier, pollution exclusions are not all alike, and the choice matters.

Carriers may watch for *Flexdar* but they are not waiting to develop solutions for their markets. If we can help you think through the exposures and options, or provide you with cases or sample wordings, just contact your Gen Re representative.

Business Auto—Texas—Transmission of Disease is Not Use of Bus

Hundreds of cases every year test the scope of business and personal auto insurance coverage, often to determine whether auto or business policies will apply to a loss. Here the issue was whether the accident occurred in the "ownership, maintenance or use" of the vehicle. The Texas claim involved a commercial bus company who provided a bus and driver for a school field trip. After the trip, several students tested positive for latent TB and the driver was identified as the source. A trial court awarded \$5 million in the suit against the bus company. The insurance dispute went all the way to the Texas Supreme Court, who held that there was no coverage under the Business Auto policy. The injuries did not arise out of the use of the bus but rather from an unhealthy driver. Since the bus was not

a substantial factor in producing the injuries, there was no connection to satisfy the “use” test. *Lancer Ins. v. Perez*, 2011 Tex. LEXIS 512.

Gen Re Note: The high court described the risk as “a general liability” exposure, although GL policies were not discussed in the decision. From a risk management perspective, we add that regulations require bus driver medical testing every two years—the bus driver in question had not been tested for five years.

Data Breach—Maine—Liability for Mitigation Costs

In the continuing litigation following the Hannaford computer breach and stolen credit card numbers, the federal appellate court in Maine has determined that certain mitigation costs can be considered damages under negligence and contract law. Some customers experienced identity theft and significant losses, others did not. Last year the Maine Supreme Court held that, in the absence of physical harm or economic loss, the time and effort alone to avoid or remediate harm was not a cognizable injury for which damages could be recovered. What about mitigation costs when some cards were used fraudulently and other customers purchased insurance and/or obtained replacement cards? The appellate court held that such mitigation costs were damages permitted under Maine law. One important key here is that some stolen card numbers were used, which made it reasonable and foreseeable for all compromised customers to seek protection. No other damages were recognized. *Anderson v. Hannaford Brothers Co.*, 2011 U.S. app. LEXIS 21239.

Gen Re Note: The Maine ruling did not involve insurance coverage, only liability. This is the first appellate court to permit recovery of mitigation costs by individuals who did not suffer actual injury. The court distinguished other rulings denying relief because there was no evidence of theft from the plaintiffs or those similarly situated. The stolen laptop or breach without fraudulent transactions might not support damages in Maine, although we will not know this until an actual case is presented.



Habitational—North Dakota—Off Premises Duty

A Supreme Court ruling from North Dakota makes it clear that landlords and property managers can be liable for accidents that occur off premises, if they are caused by a dangerous

condition on the premises. Here the apartment building parking lot had vertical privacy slats parallel to the sidewalk. A resident exited the lot but did not see the plaintiff riding her bike on the sidewalk, which led to a collision and this lawsuit. The parties disputed who owned or controlled the sidewalk where it intersected with the driveway, but the courts never determined ownership. The trial court dismissed the action, but the state high court reversed and held that landlords have duties to protect third parties and maintain property in a reasonably safe condition for all lawful entrants. A trial will follow on whether a duty exists under the circumstances of the case. *Saltsman v. Sharp*, 2011 N.D. LEXIS 172.

Risk Management Note: Without dwelling on the duty finding (which we think is what most state courts would conclude as well), our thoughts go to risk management for property owners. Think about all those developments with “privacy slats” and walls that block views of the sidewalk and street. They certainly provide some safety and esthetic benefits, but they can also create hazards if they block all vision of passing people and vehicles.

Habitational and Lead Paint—Maryland—Landlord Exposures

Recently the Maryland Court of Appeals struck down the provision of the 1994 lead paint law that granted qualified immunity to landlords if they complied with certain clean-up standards. The high court found that the compensation scheme for claimants was too limited, thus striking down the liability protections. *Jackson v. Dackman Co.*, 2011 Md. App. LEXIS 639.

Gen Re Query: What is the impact of this decision on the ISO and other lead paint coverage forms in the marketplace? ISO CG 04 27 06 98 contains very low limits for relocation and medical expenses. Will the ruling prompt coverage changes?

> **Another Maryland Case—Condo Board Duty to Pursue Contractors**—In other litigation, the high court held that condo associations have a duty to seek recovery from negligent developers for claims related to the common elements of the development. The condo association has the obligation to maintain and repair the common elements, and the duty to pursue recovery for any alleged construction defects in those elements. Consequently, unit owners have a cause of action against the association for a breach of this duty. The association sought damages after the state of limitations had expired, so the costs of over \$1 million were passed on to unit owners via special assessments and fees. These losses were the damages sought by the unit owners. *Greenstein v. Council of Unit Owners of Avalon Court Six Condominium* 2011 Md. App. LEXIS 130.

Gen Re Note: We wonder if the above damages can be recoverable under the Condo D&O policy, assuming there was one. These forms vary widely, although most exclude condo fees and/or construction defects. Since there was no such discussion in the decision, we only raise the issue. ■



The trend to find premises liability for alcohol-induced accidents affects restaurant and bar exposures in all states.

Business Host—New Mexico—Liquor Liability

A ruling from the New Mexico Supreme Court expands exposures for all companies that entertain clients over lunch and drinks. The pharmaceutical reps took a doctor’s office employee out to lunch, which was followed by nearly eight hours of drinking at various locations. At the end of the day, the employee drove away in her own vehicle and a fatal accident occurred soon thereafter. In addition to suing the restaurants and bars, the plaintiffs also sued the pharmaceutical reps and their employers. The New Mexico Liquor Liability Act provides for tort liability of liquor licensees and social hosts who “sell, serve or provide” alcohol. The statute does not define “social host” although it does not apply to a guest in a “social setting.” So, what does this mean for the business lunch and drinks in public establishments?

The New Mexico Supreme Court permitted the action to proceed against the business hosts. The court held that the liquor liability statute does not limit social host liability to private settings. The term “social host” can include those who pay for the drinks, even when bar staff furnish the alcohol. Nothing in the statute or legislative history of the act precludes liability of the bar *and* business host. The court acknowledged that “*not everyone who ‘antes up’ at the bar is a social host.*” However, in this situation, eight hours of drinking and allowing the employee to drive away were enough to avoid dismissal of the suit. The bottom line is limit the wining with the dining. *Delfino v. Griffo*, 2011 N.M. LEXIS 207.

Premises vs. Dram Shop Liability—Maryland, Colorado and Pennsylvania—Night Clubs and Taverns

Often bars and restaurants are confronted with negligence claims that arise out of the service of alcohol, usually as a means to avoid recovery limitations in dram shop law or tapping the GL policies. These three cases illustrate the trend and outcome. The facts in the cases are more pertinent to bars but

the core legal and coverage issues are relevant to all establishments.

- > **Maryland**—The Maryland high court considered a rowdy scene in a college-area bar. An alcohol-fueled fight on the premise left one patron severely injured. Evidence emerged about frequent fights and other unruly behavior at the bar. The lower court dismissed the entire claim because Maryland does not recognize dram shop liability. The high court reversed, finding enough evidence to support a premises liability claim and return the case for trial. The premises liability claim was based on the failure to provide adequate security and the foreseeability of injury given the history of police calls to the location. *Troxel v. Iguana Cantina*, 2011 Md. App. LEXIS 137.
- > **Colorado**—The Colorado Supreme Court considered a case involving a nightclub scene on New Year’s Eve. The patron causing the injury was served while visibly intoxicated, then readmitted after being ill. He later stabbed another patron more than a block away. The case turned on how the dram shop law applied to a criminal act off the premises. A trial court dismissed all dram shop and negligence claims. The high court disagreed on the dram shop issue, concluding that foreseeability of harm is not required by the statute. The dram shop law requires a willful and knowing sale of alcohol to a visibly intoxicated person, and injury resulting from the intoxication. If those tests are met, the act causing injury—be it criminal or off the premises—need not be foreseeable. *Build It and They Will Drink v. Strauch*, 2011 Colo. LEXIS 471.
- > **Pennsylvania**—On St. Patrick’s Day, the bar had served and later ejected two visibly intoxicated and rowdy patrons who were later involved in a serious accident. The bar’s GL insurer denied a defense based on the liquor liability exclusion. The Pennsylvania appellate court held that premises liability was the basis of the claim, and that the liquor liability exclusion did

not apply to those allegations. The court focused on the ejection of the visibly drunk patrons, which did not fall within the liquor liability exclusion. The court was clear that the case involves only a duty to defend, and that the duties of tavern owners to third persons might be reconsidered for any duty to indemnity. *Penn America Ins. Co. v. Peccadillos, Inc.*, 2011 Pa. Super. LEXIS 2237.

Gen Re Note: The premises liability exposures push these claims into a GL rather than liquor liability policy. They underscore the fact that all GL insurers of establishments serving alcohol have exposures related to alcohol, regardless of an exclusion or the existence of a liquor liability policy. One approach taken by many carriers is use of an Assault and Battery exclusion, which would have helped in two of these cases.



For more reading on this topic, see our April 2009 *Casualty Matters—Liquor Liability—The Rules of the Road*. If you have an ID and

password to our client extranet, Gen Re Online, look for this publication on www.genre.com. Click Publications—By Series, and scroll to “Casualty Matters.” Or else, ask your Gen Re representative for a copy.

Underwriting Restaurants and Bars

The trend to find premises liability for alcohol-induced accidents affects restaurant and bar exposures in all states. The impact is most acute in states with dram shop limitations or damage caps, such as Illinois. The current Illinois caps are roughly \$61,000 per person and \$75,000 for means of support, both of which are adjusted annually for inflation. To avoid the caps and reach into GL and umbrella policies, insurers frequently see negligence allegations. Do they succeed? Not often, but we know that many claims settle out of court. We also read cases from time-to-time where courts found a basis to avoid the dram shop law and find tort liability.

Consider this recent one—The tavern first took the car keys from the intoxicated patron (good) only to return them after the patron complained (bad). The action was not based on the provision of alcohol, but rather for the breach of additional duties assumed independent of such provision—in this case, the safeguarding of keys. *Boone v. Village III*, 2011 Ill. App. Unpub. LEXIS 1675. The dissenting judge in the case points out that taverns and restaurants do not have a general common law duty to prevent intoxicated patrons from leaving the premises. Otherwise, what would be left of the dram shop statute? Had the tavern done nothing, there might be no duty and no case.

A restaurant or bar in any state can be subject to criticism for accidents that occur partially due to their customers’ lapse in judgment or care while under the influence of alcohol. Examples may include a serious fall on premises, bar fights improperly handled by on site security personnel, or crowd management in the event of a fire. We have certainly seen sizable claims spring from these circumstances.

With or without a cap, underwriting matters. A variety of restaurant/bar management and location factors can guide underwriting decisions. The

cases here involved college area bars and rowdy nightclubs with histories of fighting on and near the premises. Do your applications ask about past police reports and similar activity? How close is the risk to a college or sporting arena? Do they employ additional staff for high-volume holidays? These are just a few factors you might find in underwriting guidelines. If you want us to share more with you, let us know!

Note on Supermarkets and Convenience Marts—The Georgia high court decision applying its dram shop laws to a convenience mart reminds carriers that liquor exposures extend beyond restaurants and bars. The Georgia court held that there was no exception under the statute where alcohol (in this state, beer and wine) is not consumed on the premises. Most state dram shop laws apply only to consumption *on the premises*, but Georgia is not alone for lacking this exemption. Illinois, Texas and neighboring Alabama are among the handful of states that do not impose a premises requirement by statute. *Flores v. Exprezit! Stores*, 2011 Ga. LEXIS 547.

Sample Dram Verdicts

- > **Country Club—Texas—\$1 million.** The driver had arrived at the private club after drinking and was served roughly 12 cans of beer throughout the day.
- > **Convenience Mart—Florida—\$1.2 million.** The market sold malt liquor three separate times; the driver left each time to consume the bottles.
- > **Restaurant—Massachusetts—\$3.2 million.** Patron had been served while visibly intoxicated, totaling over 132 ounces of beer, before causing a car accident.
- > **Liquor Store—Michigan—\$14 million.** Liquor store sold 42 cans of beer to underage teens, one of whom was seriously injured during horseplay.



Social Host—California—Expanded Law

One year after creating a cause of action for social host liability, the Legislature took some time to “clarify” various provisions in a new bill, AB 1407. There are three important changes. First, the law imposes liability if the adult furnishing alcohol “knew or should have known” that the guest was a minor.

Second, the civil cause of action is available to (or another on behalf of) the injured party or the minor. Finally, the law states that the furnishing of alcohol to such minors may be found to be the proximate cause of injury. In all other social host cases, *consumption* is presumed to be the proximate cause.

Social Host Liability—Illinois—No Duty Undertaken

The Illinois Supreme Court put a limit on just how far social host liability extends when the homeowner/parent does not furnish the alcohol. The scenario in this case is a common one. Teens held a party in the home, and the parents supplied only soft drinks but alcohol was smuggled in. The parents had promised to monitor but undertook no affirmative action. The lower courts held that there was no statutory or common law social host cause of action without actual service of alcohol, but left the door open for showing a voluntary duty toward the minors. The Illinois Supreme Court answered that a promise to “monitor and supervise” a party does not suffice to establish an affirmative duty. By not promising more, the parents did not increase the risk of harm or create any reliance on any undertaking. The high court was clear that the right facts could support a valid cause of action based on a voluntary duty, but these facts did not exist here. *Bell v. Hutsell*, 2011 Ill. LEXIS 777.

Homeowners Occurrences—Arizona—Multiple Causes

A heartbreaking claim led to an appellate decision that two young drowning victims constituted two separate occurrences under the grandparents’ HO policy. The children were being “watched” by their grandparents who individually fell asleep without locking doors or pool gates. Each child was found dead in the pool. The court used the cause test to find two occurrences, and hence two HO limits. Multiple acts of negligence by two people contributed to the events, which led to the court to conclude that it could not find one interrupted sequence. There was no mention of umbrella coverage. *Austin Mut. Ins. co. v. Aldecoa*, 2011 Ariz. App. Unpub. LEXIS 1265.

Risk Management Note—There may not be a wording solution because these “number of occurrence” cases often turn on the facts and unique state law. Perhaps risk management is the best way to address this exposure. Arizona, California and Florida, among other states, have many grandparents with backyard pools and visiting children. Most insurers ask about fences and locks around pools, and most states mandate such safety measures. Would frequent reminders from carriers to keep pool gates locked help avoid a loss or two?

Dog Bite Liability—Idaho—Exception to One Bite Rule

Many thanks to our West Region client who shared experience with the dog bite law in Idaho. Our recent *Insurance Issues* publication included Idaho in the “one bite law” list of states. There is a very large exception in Idaho, however, where the dog is vicious and the owner knows or should know of the dog’s dangerous propensities.

If a dog runs off the premises or has a tendency to aggression, the dog (and its owner) might not get one free bite. On the other hand, if the dog is sleeping in its yard when a guest jumps on it, well, chances are that liability can be avoided. Thanks again to our West Region client for bringing this exposure to our attention!



> **New Jersey**—See the dog bite liability case (next page) in our New Jersey Supreme Court Follow-up for an issue that could expand dog bite exposures. We do not think that the high court will permit such damages—both the trial and appellate court rejected them—but we will maintain our watch for the outcome. ■

GEN RE RESEARCH

We track major rulings on social host and dram shop liability. If we can help you evaluate the law in any state or review underwriting guidelines, just give your Gen Re representative a call.

Note—The Illinois Legislature had already made it unlawful for parents to knowingly permit minors to consume alcohol in their homes. However, the penalties are all criminal.

Other States—To our knowledge, no state supreme courts have upheld social host liability when parents had no involvement in the party. In one Tennessee case, the state high court permitted an action based upon a voluntary duty—the parent had promised other parents to prevent drinking, and even took car keys at the front door. Perhaps this voluntary undertaking would have been enough for the Illinois Supreme Court.

State Supreme Court Follow-ups—New Jersey—Auto, Dram, Homeowners

Here is how the New Jersey Supreme Court decided pending cases highlighted in our May 2011 *Casualty Matters*, with a note on a new case worth following:

AUTO—Does N.J.S.A. 39:6A-4.5(a) bar a person who was injured while a passenger in her own uninsured vehicle from pursuing an action for automobile accident injuries? *A-22-10 Denise A. Perrelli v. Bridget Pastorelle (066207)* **Court:** Yes, the statute bars such first-party recoveries by individuals who are passengers in their own uninsured vehicles.

AUTO—Does N.J.S.A. 39:6A-4.5(a), which bars a lawsuit for automobile accident damages by an individual who was operating an uninsured vehicle, also preclude a wrongful death claim by the estate of that individual? *A-9-10 Sheila Aronberg v. Wendell Tolbert (066414)* **Court:** Yes, the statute bars such actions by estates as well as by the individual operating an uninsured vehicle.

DRAM SHOP—Does N.J.S.A. 39:6A-4.5(b), the No Fault Act provision that precludes a DUI offender's action to recover damages for losses resulting from a motor vehicle accident, bar the intoxicated motorist's claim under the Dram Shop Act, N.J.S.A. 2A:22A-1 to -7, against the tavern that served him? *A-110-09 Frederick Voss v. Kristoffe J. Tranquilino (066153)*

Court: No, the recovery limitations on the uninsured status of the vehicle do not affect the dram law or duties of servers under the dram shop statute.

DOG BITE LIABILITY/HOMEOWNERS— NEW PENDING CASE:

Can a pet owner maintain an action for emotional distress upon witnessing her dog being attacked and killed by another dog? This case was accepted for review in April. *McDougal v. Lamm*, No. 99-10.

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Here are some recent Gen Re Research publications:

- > Nanotechnology—The Smallest and Biggest Emerging Issue Facing Casualty Insurers?—*Insurance Issues*, November 2011
- > Logistics and 3PL—*Property Matters*, October 2011
- > UM/UIIM Updated Law Survey for Third Quarter 2011—*E-News Auto*, October 2011
- > Dog Bite Liability—Insurers' Best Friend?—*Insurance Issues*, September 2011
- > The Regulatory Challenges Ahead—*The Bulletin*, September 2011
- > Wind and Solar Energy Time Element—More Than Meets the Eye—*Facultative Matters*, August 2011
- > Emerging Exposures and New Wordings—Are Your Forms Keeping Up?—*Policy Wording Matters*, June 2011
- > Workers' Compensation—Managing Through Tough Times (and Not Just Living Through Them)—*Gen Re Viewpoint*, June 2011

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