CARLOCK COPELAND
CIVIL LITIGATION

quarterly newsletter

Atlanta, GA | Charleston, SC

News

Volume VIII - Issue 4 - Winter 2011

Table of Contents

01 | Announcements

02 | Recent Victories

02 | Charleston Congressman Discusses Proposed Federal Truck Regulations

03 | Avoiding Spoliation Sanctions in Motor Carrier Cases

03 | The Settlement Dilemma

05 | South Carolina Construction Law Update

05 | New South Carolina Case with Time on Risk Analysis

06 | The Georgia Supreme Court Clarifies the Definition of "Occurrence" in CGL Policies

07 | Publications & Presentations

07 | Carlock, Copeland & Stair Activities

ANNOUNCEMENTS

CCS Named to U.S. News and Best Lawyers® 2011-2012 List of "Best Law Firms"

On November 1, U.S. News and Best Lawyers® named Carlock, Copeland & Stair to its National and Atlanta Metropolitan 2011-2012 "Best Law Firms" Rankings. The firm ranks in Tier 1, in the Atlanta Metropolitan Rankings, for Construction Law, Legal Malpractice Law - Defendants, and Personal Injury Litigation - Defendants. Carlock Copeland is also listed in the National Rankings, in Tier 3, for Construction Law, and, again, in the Atlanta Metropolitan Rankings, in Tier 3, for Commercial Litigation.

U.S. News and Best Lawyers® chose a tiering system rather than ranking law firms sequentially because firms were often separated by small or insignificant differences in overall score. The first tier includes those firms that scored within a certain percentage of the highest-scoring firm(s); the second tier, those firms that scored within a certain percentage of the next highest scoring firm(s), and so on. The number of tiers included in each practice area or metropolitan area ranking varies.

This honor of being included in the "Best Law Firms" rankings comes close on the heels of the U.S. News and Best Lawyers® announcement of The Best Lawyers in America® 2012, which included four Carlock Copeland attorneys:

Thomas S. Carlock
Commercial Litigation (Atlanta, GA)
Medical Malpractice Law (Atlanta, GA)
Personal Injury Litigation (Atlanta, GA)
Best Lawyer® Since 1991

Kent T. Stair
Construction Law (Atlanta, GA)
Legal Malpractice Law (Atlanta, GA)
Best Lawyer® Since 2006

Wayne D. McGrew, III
Personal Injury Litigation (Atlanta, GA)
Best Lawyer® Since 2008

Johannes S. Kingma
Legal Malpractice Law (Atlanta, GA)
Best Lawyer® Since 2009

Since its inception in 1983, Best Lawyers has become universally regarded as the definitive guide to legal excellence.

Insurance Coverage Corner Selected as a LexisNexis Top Blogs for Insurance Law 2011

We are pleased to announce that our blog, Insurance Coverage Corner, has been selected as a LexisNexis Top Blog for Insurance Law - 2011.

The Insurance Coverage Corner focuses on legal updates, opinions and other relevant information for insurance coverage and bad faith litigation, and is authored by Fred Valz, Michael Ethridge, Charles McDaniel, Katherine Sullivan and Megan Boyd.

You can subscribe to the Insurance Coverage Corner by clicking on "Add this Blog" under Subscribe at www.insurancecoveragecorner.com.

RECENT VICTORIES

Defense Verdict for General Surgeon in Wrongful Death Claim

Tom Carlock and Eric Frisch successfully defended a general surgeon in a wrongful death claim in Bartow County Superior Court (Cartersville, Georgia). The patient was at the hospital for a small bowel obstruction. The surgeon ordered the placement of a nasogastric tube in the operating room. Because it was an "open" procedure, a laparotomy, the surgeon reached up and felt the nasogastric tube in the stomach. About 18 hours later, the patient became sick and, on investigation, it was discovered the patient had suffered a rupture of the esophagus from the nasogastric tube. The patient was then transferred to another hospital, but she died 10 days later at age 85. Plaintiffs alleged that the surgeon failed to confirm placement of the nasogastric tube in the operating room and failed to diagnose and treat the perforation in a timely manner. The jury returned a defense verdict in just over 3 hours.

Dismissal Obtained in Federal Court Action

Mike Ethridge and Katie Sullivan obtained a dismissal in a federal court action in which the plaintiff was seeking over $650,000 in actual damages for injuries sustained when he fell off a ladder at a construction site. Mike and Katie represented the subcontractor who allegedly installed the ladder in violation of applicable standards. They were able to secure a dismissal after establishing that the ladder was installed by someone other than their client.

Eleventh Circuit Affirms Rooker-Feldman Dismissal of Estate Administration Claims Against Lawyers

Lindsey Hettinger, Michele Jones, and Joe Kingma represented two attorneys and their law firms, who were sued in connection with the administration of an estate. The Northern District lawsuit was dismissed for lack of subject-matter jurisdiction under the Rooker-Feldman doctrine. The Court of Appeals affirmed the dismissal on October 4, 2011.

Motion to Dismiss Granted for Collections Law Firm

Shannon Sprinkle and John Bunyan won the dismissal of a federal action against a law firm that was retained to initiate foreclosure and dispossessory claims. In dismissing the case, the Northern District of Georgia concluded that the plaintiff's allegations of Fair Debt Collection Practices Act violations and wrongful foreclosure failed to show any plausible claim for relief.

Motion to Dismiss Granted in U.S. District Court for the Northern District of Georgia

Brian Spitler, Michele Jones, and Joe Kingma won dismissal of claims against their attorney client in the U.S. District Court for the Northern District of Georgia. The plaintiffs alleged that they lost their investments in a real estate company due to fraud. The plaintiff investors sued various defendants, including the attorney who performed corporate legal work for the company. The court agreed that the plaintiffs failed to state claims for securities fraud, fraudulent misrepresentation, unjust enrichment, false certification of financial statements, and civil RICO against the attorney.

Directed Verdict Granted in South Carolina Medical Malpractice Case

Lee Weatherly was successful in obtaining a directed verdict for his client, an urgent care physician, in a Charleston, South Carolina medical malpractice case. In this case, Plaintiff alleged that the Defendant urgent care physician was negligent in his diagnosis and recommended care of a large plural effusion in Plaintiff's left lung. Plaintiff contended that the physician neglected to correctly diagnose her condition and send her to an emergency room for proper care, leading to a two day delay in treatment. There was a factual dispute as to what care the Defendant physician actually recommended to the Plaintiff. However, the Plaintiff was unable to bring forth any evidence that even if the Defendant physician was negligent, the two day delay in treatment caused her any damages. The Judge found that the Plaintiff's claim was deficient as a matter of law and ordered that it be dismissed with prejudice. For more information on the case, contact Lee at lweatherly@carlockcopeland.com.

Defense Verdict for National Auto Parts Store in Premises Liability Case

Gary Lovell and Doug MacKelcan obtained a defense verdict for a national auto parts store in a premises liability case after a two day trial in Charleston County, South Carolina. In this case, Plaintiff fell as she was exiting the store and broke her finger, requiring emergency surgery and months of physical therapy. Plaintiff claimed the store failed to remedy a dangerous condition that caused Plaintiff to fall; however, the jury determined that the store was not negligent in its maintenance and supervision of the premises and returned the defense verdict after approximately two hours of deliberation.

Charleston Congressman Discusses Proposed Federal Truck Regulations

By: Gary Lovell

Recently in Charleston, SC, U.S. Rep. Tim Scott rallied against new federal trucking regulations, such as a new U.S. Department of Transportation rule that could reduce truckers' allowable daily driving hours from 11 to 10 hours.

For the full article or to read more about legal updates, opinions and relevant information on the trucking & transportation industry, visit our Southeastern Trucking & Transportation Defense Blog at www.southeasterntruckingdefense.com.

Avoiding Spoliation Sanctions in Motor Carrier Cases

By:
Eric J.D. Rogers

Under Georgia law, a party can suffer sanctions in litigation if they do not preserve evidence in its original, unaltered form. Known as "spoliation of evidence," this includes the destruction or the significant and meaningful alteration of a document or other tangible evidence and the failure to preserve evidence that is necessary to contemplated or pending litigation. The sanctions can be harsh and can mean the difference between winning and losing a factually-defensible case.

In cases involving motor carriers, the failure to preserve evidence for litigation is the issue that defense counsel encounters most frequently. In particular, we often deal with situations in which a party has disposed of or destroyed evidence after a lawsuit was filed and the evidence would have been clearly important to the prosecution of a claim or the development of a defense. This scenario can occur in any type of lawsuit, such as financial statements in a divorce proceeding or medical records in a medical malpractice claim. Lawyers can try to prevent such situations by instructing their clients early in the process to preserve all documents, even if it is unclear whether those documents are truly "relevant." Sometimes, the lawyer will go to the clients offices to collect any documents or otherwise assist in preserving evidence.

In motor carrier cases, spoliation of evidence can arise in unexpected ways because carriers are required to comply with the Federal Motor Carrier Safety Regulations. The regulations require companies and drivers to maintain numerous documents and evidence for certain periods of time. For example, carriers and drivers must maintain all log books for six months.

At the end of a required period, many companies have policies that permit them to dispose of records so they can free up storage space. When an accident occurs and it is possible that there may be litigation, it becomes essential that the company remove the documents from the group of documents that will be disposed of in the ordinary course of business and preserve them. Thus, once an accident occurs, the pertinent records for that vehicle and driver need to be identified, taken out of the normal destruction process and preserved for future use. The question then becomes under what scenario can a carrier dispose of documents or other tangible items without running the risk of spoliating evidence.

In general, the carrier has a duty to preserve evidence when there is contemplated or pending litigation. The easy case is when an attorney representing an injured party sends a letter requesting specific evidence be preserved. Under that scenario, Georgia law is clear that the carrier is "on notice" of potential litigation, and the failure to preserve the evidence after that point may be evidence of spoliation.

Some situations are not so clear. Under Georgia law, notice of an accident is not notice of litigation. As one appellate court held, "simply because a person is injured in an accident, **without more**, is not notice that the injured party is contemplating litigation sufficient to automatically trigger the rules of spoliation." *Pagget v. Kroger*, 2011 WL 4089930 (Ga. App., 2011). Thus, in an accident involving a tractor-trailer, there would be no duty to maintain documents past the time requirements of the federal regulations just because the other person involved went to the hospital.

However, the situation becomes more difficult when something "more" than just an injury occurs. In once case, the issuance of a ticket to a tractor-trailer driver followed by an investigation by the company was held to be sufficient notice of contemplated litigation and could be sanctioned for spoliation of evidence after that point. While the mere fact of getting a ticket is probably not enough to create an affirmative duty to preserve evidence, the investigation by the company probably is.

In general, the best practice for a carrier is to comply with the regulations and maintain all documents and tangible evidence in their native format. A carrier or a driver should notify their insurance carrier and seek guidance from counsel as early as possible regarding how to preserve evidence. By focusing on these issues, a carrier can avoid the harsh sanctions associated with spoliation of evidence, which can include punitive damages, among other things.

Eric J.D. Rogers
Associate, Atlanta Office
Trucking and Transportation Litigation
404.221.2295
erogers@carlockcopeland.com

The Settlement Dilemma

By: David F. Root

At what point during "back and forth" settlement negotiations do the parties actually reach a binding settlement? Under a recent Georgia appellate decision, any condition in a settlement offer may mean that there is no agreement.

The Problem

Here's a recurring fact pattern: You are an insurance representative or a defense lawyer. Opposing counsel makes a time-limited demand for the policy limits. Liability is clear and the damages exceed the policy limits. You want to pay the limits, but there are hospital liens and other similar complications.

You respond to the settlement demand

and agree to pay the limits. But several practical questions remain: How will the liens be resolved? Can you demand indemnification? How will the litigation be terminated? Do you get a release, and if so, what will it say? Will the defendant be dismissed with prejudice?

Here's the dilemma: If you agree to pay the limits, but mention these complications and inquire how to resolve them, have you made a counteroffer which Plaintiff's counsel can reject? Have you acted in bad faith by failing to make a "mirror image" acceptance of the policy limits demand?

This is a hot topic in Georgia law. Here's an overview of the most important cases on the topic.

Unconditional Acceptance v. Counteroffer

The leading Georgia case on settlements and demands is *Frickey v. Jones*[1], decided by the Georgia Supreme Court in 2006. In *Frickey*, the Plaintiff demanded that State Farm pay its $100,000 policy limits within five days. State Farm responded timely, stating that it would "tender" its $100,000 policy limits "upon receipt of the enclosed release." State Farm noted that payment was "complicated by Grady Hospital liens and other liens," and it sought resolution of "the [hospital] lien as well as potential liens by [the] health carriers." Did this exchange constitute a settlement? The Georgia Supreme Court held "no," holding that State Farm's request that a release be signed and that liens be resolved imposed conditions for payment of the $100,000, and was thus a counteroffer.

Another often-cited case where the defendant's response to a settlement demand was conditional and thus a counteroffer is *Johnson v. Martin*[2], decided by the Georgia Court of Appeals in 1997. There, plaintiff demanded the $10,000 policy limits. The defendant agreed, but insisted on the release of another defendant and the resolution of liens. The Court of Appeals held that this response "qualified [the] acceptance of the offer by adding as a condition to the agreement the signing of the release by the Plaintiff." The proposed release contained language which would have released not only the two defendants to the action but any and all other persons. This response varied from the original offer and contained conditions, and thus was a counteroffer.

Suggestions in a Response is an Acceptance

Is a defendant or the insurer who respond to policy limits demand ever entitled to say anything other than the words "I accept?" The answer is yes.

Recently, the Georgia Court of Appeals decided *Smith v. Hall*[3]. In *Smith*, the plaintiff made a $25,000 policy limits settlement demand. The defendant responded in a timely fashion and accepted the demand by stating "we hereby accept [the demand] . . ." In addition, the defendant's counsel sent plaintiff's counsel a release and indemnity agreement, an affidavit of no liens, and an attorney's certificate of no liens. The plaintiff rejected this response on the grounds that it was a counteroffer. The Court of Appeals, however, held the initial response to be an unequivocal acceptance of the policy limits demand (noting the language "we hereby accept . . ."), and stated that the inclusion of a release was a "mere suggestion how to terminate the lawsuit," and did not constitute a counteroffer.

Similarly, in *Herring v. Dunning*[4], the plaintiff made a demand for the policy limits, which the defendant accepted in exchange for a release. The plaintiff rejected the release because it included a hold harmless provision related to medical expenses. The parties continued to communicate but the settlement fell apart. On appeal, the Court of Appeals held that the parties had reached a settlement, reasoning that the discussion about the release was merely "precatory" (i.e. suggestive) language, which invited a discussion and confirmation of terms.

The Search for Guidance

The Georgia Supreme Court may soon have the opportunity to clarify the issue in the case of *McReynolds v. Krebs*. In the *Krebs* case, the insurer responded to a demand by agreeing to pay the policy limits, but the claims representative added, "Please call me in order to discuss how the [hospital] liens . . . will be resolved as part of this settlement." The Court of Appeals held that there was no settlement agreement reached because the adjuster's comment added a condition requiring that liens "be resolved as part of th[e] settlement."

The Georgia Supreme Court granted certiorari to consider this and other issues, and heard oral argument on September 12, 2011. The defense urged the Court to fashion more a practical rule where practitioners can accept a policy limits demand, and at the same time be permitted to discuss the practicalities of settlement without the risk that such discussions would be considered a counteroffer.

Conclusion

Settling policy limits demands without risking making a counter offer is problematic. The best advice is to make a clear response that the offer to settle for the limits is accepted. Until there is further clarification, negotiators should couch any comments about a release, language in the release or lien resolution as suggestions to wrap everything up, not as condition for settlement.

1. 280 Ga. 573 (2006)
2. 142 Ga.App. 311 (1977)
3. ___ S.E.2d ___ 2011 WL 2899682 (Ga. App.)
4. 213 Ga.App. 695 (1994)
5. 307 Ga. App. 330 (2010)

David F. Root
Partner, Atlanta Office
Commercial Litigation, Construction Litigation, General Liability
404.221.2253
droot@carlockcopeland.com

South Carolina Construction Law Update

By: Paul E. Sperry and Katherine W. Sullivan

The South Carolina courts recently addressed a number of important issues in construction defect cases in the case of *Pope v. Heritage Communities, Inc*. The case arose out of construction at Riverwalk Development, a condominium complex in Horry County. The property owners association and a group of unit owners sued the general contractor (Buildstar), the developer and seller (HRI), and the parent company of both codefendants (HCI). After trial, the jury returned a verdict against all three entities. The jury awarded the property owners association $4.25 million in actual damages and $250,000 in punitive damages and awarded the unit owners $250,000 in actual damages and $750,000 in punitive damages.

On appeal, the defendants claimed, among other things, that the trial court improperly lumped all three defendants together. The defendants also claimed that the trial court erred in permitting evidence of construction defects at other developments in support of plaintiffs' claims for punitive damages. The Court of Appeals affirmed the trial court's rulings and the jury's verdict.

Amalgamation of Interests

The Court held that the even though the three corporate defendants were separate entities, they had an "amalgamation of interests" that justified holding all of them liable for the damages associated with the defects. The defendants argued that only Buildstar was directly involved in the construction as the general contractor and that the role of HCI, as the parent corporation, and HRI, who provided off-site management of the property and owned the property, did not justify grouping all of them together. Among other things, the defendants pointed out that the trial court did not use a piercing the corporate veil theory or find any evidence of fraud to justify grouping the three together.

The Court held that the defendants could all be held liable because (1) the entities had common ownership and shared the same board of directors, (2) the employees of each entity reported to the same person, (3) the companies shared the same physical office, (4) HCI, the parent, represented to the homeowners that it would repair the construction problems, and (5) HCI issued the homeowners warranty upon purchase. The Court relied on an earlier decision in which it held that a development corporation, a property management corporation, and a construction corporation had an amalgamation of interests because the companies shared owners, shared a location, and shared a letterhead.

Although this is not a new theory, amalgamation of interests is rarely advanced as a theory of recovery in construction cases in South Carolina. The *Pope* decision may encourage claimants' attorneys to make this argument in the future. The scope of the theory is open to interpretation. For example, the defense may be able to distinguish future cases by focusing on the distinct roles of each company and maintaining that there is no evidence to pierce the corporate veil, among other things.

Defects at Other Developments as Evidence to Support Punitives

At trial, the property owners association and the unit owners introduced evidence that the defendants had built other developments that had construction defects. The defendants sought to exclude this evidence, arguing evidence of defects at other properties should be excluded as prejudicial because the evidence was, essentially, inadmissible character evidence. The Court of Appeals held that the trial court properly admitted the evidence because the construction defects at other HCI developments were substantially similar to the defects at the Riverwalk development. From there, the Court affirmed that the evidence was admissible to prove the duration of the conduct, the awareness of defects, and similar past conduct for the jury to evaluate whether to award punitive damages.

This decision may encourage attorneys to collect evidence of similar defects at other properties. However, there is an argument that the disclosure of this type of discovery is improper until such time as a judge determines that the conduct of the defendant could give rise to a punitive damage award. In addition, although weakened by this case, there is an argument that this evidence is overly burdensome (depending on the number of projects involved) or inadmissible as irrelevant and unfairly prejudicial, depending upon the facts.

Paul E. Sperry
Partner, Charleston Office
Construction Litigation
843.266.8229
psperry@carlockcopeland.com

Katherine W. Sullivan
Associate, Charleston Office
Construction Litigation, General Liability
843.266.8233
ksullivan@carlockcopeland.com

New South Carolina Case with Time on Risk Analysis

By: R. Michael Ethridge and Katherine W. Sullivan

While the buzz around the first *Crossmann* decision focused on the definition of "occurrence" in a CGL policy, most of the discussion following the second *Crossmann* decision (Crossmann Communities II) focuses on an in-depth analysis of time on risk. *Crossmann Communities of North Carolina v. Harleysville Mutual Insurance Co.*, 2011 WL 3667598 (August 22, 2011).

South Carolina courts follow a modified continuous trigger theory and have held that coverage is triggered at the time of the injury-in-fact and continuously thereafter to allow coverage under all policies in effect from the time of the injury through the progressive damage. In a 1997 case, *Joe Harden Builders, Inc. v. Aetna Cas. and Sur. Co.,* 326 S.C. 231, 486 S.E.2d 89 (1997), the South Carolina Supreme Court stated that "this theory of coverage will allow the allocation of risk among insurers when more than one insurance policy is in effect during the progressive damage." In the past, this statement was frequently construed to mean that the risk is to be split on a pro rata basis among insurers providing coverage.

However, in *Crossmann Communities II,* the South Carolina Supreme Court rejected this interpretation and also rejected a joint and several approach to allocation of damage in favor of a strict pro rata approach:

> [We] hold that the proper method of allocating damages in a progressive property damage case is to assign each triggered insurer a pro rata portion of the loss based on that insurer's time on the risk. . . . The basic formula consists of a numerator representing the number of years an insurer provided coverage and a denominator representing the total number of years during which the damage progressed.

Crossmann Communities II suggests that any given insurer is only responsible for a pro rata portion of a settlement based on the policy years divided by the total years of damage--irrespective of whether the policyholder had coverage for the remaining years. The court reasoned that this interpretation encourages businesses to purchase insurance which promotes market stability, but the results may make it more difficult to settle construction defect cases.

While encouraging businesses to retain insurance is a worthy goal in theory, it remains to be seen how it will play out practically. We can think of several examples of situations that could be problematic. For example, what if a contractor dissolves a corporation shortly after completing a construction project and discontinues insurance on the dissolved corporation (assume he had coverage for one year)? The work of the contractor was faulty and caused progressive damage to other property for the next eight years. The progressive damage to other property is compensable, but who is obligated to pay? Under Crossmann Communities II the insurance company providing coverage for one year to the now-dissolved corporation may only be obligated to pay 1/8 of any total judgment rendered against the contractor.

Another question is who is responsible to pay for years of progressive damage if the insurance company holding a policy during those years denies coverage? Assume there are six years of progressive damage with three different insurance companies each providing insurance for two years. Assume that two out of three of the insurance companies deny coverage on the basis of an exclusion in the policy. If coverage is denied for four out of six years of damage, is the policyholder obligated to pay 2/3 of the settlement/judgment? Interesting and important questions.

For more information on time on risk and other current and important insurance coverage topics, please visit our Insurance Coverage Corner Blog at www.insurancecoveragecorner.com.

R. Michael Ethridge
Partner, Charleston Office
Commercial Litigation, Construction Litigation, General Liability
843.266.8201
methridge@carlockcopeland.com

Katherine W. Sullivan
Associate, Charleston Office
Construction Litigation, General Liability
843.266.8233
ksullivan@carlockcopeland.com

The Georgia Supreme Court Clarifies the Definition of "Occurrence" in CGL Policies

By: Megan E. Boyd

In the recent case of *American Empire Surplus Lines Insurance Company v. Hathaway Development Co., Inc.*, the Georgia Supreme Court clarified the meaning of the term "occurrence" in commercial general liability insurance policies to include the negligent performance of intended acts. With its holding in *Hathaway*, the Georgia Supreme Court has indicated that Georgia courts should interpret the term "occurrence" broadly. This represents a move away from the distinction some Georgia courts have made between losses resulting from unintentional acts and losses resulting from unintentional consequences of intentional acts.

Hathaway hired a subcontractor to install pipes and lines on three different projects, which the subcontractor did. Problems arose with the installation and several lawsuits resulted, including one related to whether the subcontractor's policy covered the damages. The subcontractor's insurer defended on several grounds, including the contention that the damages were from breach of contract and that the policy did not cover this claim because the subcontractor intended to install the pipes and therefore, this was not an "occurrence."

In general, construction defects constituting a breach of contract are not covered by CGL policies, but faulty workmanship that is negligently performed that damages other property may constitute an "occurrence" under a CGL policy. With this background, the Georgia Supreme Court looked to the terms of the policy to determine whether it covered Hathaway's claims.

Here, the policy defined an "occurrence" as "an accident, including continuous

or repeated exposure to substantially the same, general harmful conditions." According to the insurer, the subcontractor's acts were intentional, not an "accident" and, therefore, not an "occurrence" that was covered under the policy. On appeal, the Georgia Supreme Court noted that the policy defined the term "occurrence" but did not define the term "accident." As a result, the Court used the commonly-accepted meaning of the term "accident," defined as "an event happening without any human agency, or, if happening through such agency, an event which under circumstances, is unusual and not expected by the person to whom it happens . . . an unexpected happening without intention or design." The Court determined that this definition was consistent with the way the word had been used in prior decisions.

The Court then determined that the negligent acts of the subcontractor that caused "unforeseen or unexpected damage" constituted an "occurrence" under the policy. The Court rejected the insurer's claim that the conduct of the subcontractor could not be an "accident" because it was performed intentionally. The Court then held that "a deliberate act, performed negligently, is an accident if the effect is not the intended or expected result; that is, the result would haver been different had the deliberate act been performed correctly."

It is hard to reconcile the Court's decision with other court decisions on the same issue. For example, the Federal District courts in Georgia have used a more narrow definition of the term "occurrence" to exclude unintentional consequences of intended acts. For example, in *Owners Ins. Co. v. Chadd's Lake Homeowners Ass'n*, a Federal District court ruled that there was no coverage under a policy of insurance for damages sustained when silt and sediment was discharged into a lake during the construction of several homes because the discharge was not accidental and therefore not an "occurrence" under the policy. In another ruling, a Federal district judge determined that the purposeful installation of stucco that resulted in water penetration was not an "occurrence" under a general liability policy. However, as the *Hathaway* court noted, these district court rulings are not binding precedent in Georgia courts.

Thus, when assessing the existence of coverage in CGL policies, insurers can no longer conclude that there is no coverage because the act that leads to the damages was an intended act. In making coverage determinations, insurers must now also consider whether the damages occurred as an unintentional result of intended act.

Megan E. Boyd
Associate, Atlanta Office
General Liability, Construction Litigation
404.221.2211
mboyd@carlockcopeland.com

PUBLICATIONS & PRESENTATIONS

Partner Sarah Wetmore moderated the AIA Contracts Seminar, "Know what you're getting into before you sign your next AIA contract," on October 26, 2011 in Mt. Pleasant, SC. At the seminar, she was also the co-presenter of "Negotiating the Contract - Contractual 'Do's' and 'Do Not's'."

Healthcare practice group partner Eric Frisch spoke on apportionment of damages at the 27th annual Medical Malpractice Law Institute seminar at Amelia Island. Associate Joe Hoffman researched and wrote the supporting paper, which was very well-received.

Partner David W. Overstreet co-presented a seminar on legal malpractice trends and best practices for avoidance to attorneys from North Carolina, Louisiana, Mississippi, Georgia, and Florida.

Joe Kingma presented "Lawyer Liability—How to Avoid Becoming the 'Deep Pocket'" at the Commercial Real Estate Seminar, an ICLE program, at the State Bar of Georgia on December 1.

Tom Cox spoke on the future of Georgia charter schools after the 2011 Supreme Court decision at the 2011 GSBA/GSSA Annual Conference on December 2.

Eric Frisch spoke on minimizing risks and avoiding malpractice claims at the annual meeting of the Georgia Society of Plastic Surgeons on December 17, 2011 at the Grand Hyatt Buckhead Hotel in Atlanta, GA.

CARLOCK, COPELAND & STAIR ACTIVITIES

Carlock, Copeland & Stair participated in the 2011 Travelers MS Challenge Golf Tournament in Atlanta. This event helped raise $54,000 for the Multiple Sclerosis Society. The Society helps people affected by MS by funding cutting-edge research, driving change through advocacy, facilitating professional education, and providing programs and services that help people with MS and their families move their lives forward.

Please visit www.CarlockCopeland.com to obtain more information on our recent victories, publications and presentations, attorney profiles and practice areas.

quarterly newsletter

CARLOCK, COPELAND & STAIR, LLP

ATLANTA, GEORGIA
One Ninety One Tower
191 Peachtree Street NE, Suite 3600
Atlanta, GA 30303
404.522.8220 Phone
404.523.2345 Fax

CHARLESTON, SOUTH CAROLINA
40 Calhoun Street
Suite 400
Charleston, SC 29401
843.727.0307 Phone
843.727.2995 Fax

www.CarlockCopeland.com

Return To:
Carlock, Copeland & Stair, LLP

191 Peachtree Street NE
Suite 3600
Atlanta, GA 30303

COMMENTS FROM THE EDITING TEAM

Would you like to receive the Carlock Copeland Quarterly Newsletter via email? If so, please send your name and company information to info@carlockcopeland.com

Once you send us your information, our newsletters will be delivered straight to your inbox.

We invite your comments to our editing team:

Eric Frisch, Partner
efrisch@carlockcopeland.com

Kari Hilyer, Marketing Manager
khilyer@carlockcopeland.com

If you would like to request additional copies or to edit your subscription information, please contact us at info@carlockcopeland.com

The CCS Quarterly Newsletter is a periodic publication of Carlock, Copeland & Stair, LLP, and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult counsel concerning your own situation and any specific legal questions you have.