

Condon & Cook, LLC

Newsletter

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We are pleased to advise of Condon & Cook, LLC's recent successful results, publications, and speaking engagements.

Jury Verdict - Treatment Not Medically Necessary

Paul Festenstein represented a defendant in a jury trial based on a motor vehicle accident in which the defendant admitted liability but contested the extent of the damages claimed by the Plaintiffs. We asserted that cervical MRIs, the rental of two TENS units for home heat treatments, and the use thermal heating blankets and cervical collars was not medically necessary. The jury rejected the Plaintiffs' claims for all diagnostic testing and found that the other contested treatment was not medically necessary. The jury returned a verdict awarding damages which were \$3,800.00 less than the aggregate medical bills submitted by the Plaintiffs and \$4,900.00 less than the amount of the award of the arbitration of this matter.

Jury Verdict - Premises Liability

Mark Ruda obtained a Not Guilty jury verdict on behalf of a landlord in a tort lawsuit predicated upon premises liability. A tenant's guest slipped and fell on the front steps leading up to the tenant's unit. The guest filed a tort Complaint against the landlord alleging that the landlord negligently allowed the stairs to be in a hazardous and unsafe condition, failed to inspect the stairs, failed to warn Plaintiff of the hazardous and unsafe condition, failed to keep the stairs in safe condition and failed to maintain the stairs. After deliberating for merely 23 minutes, the jury

returned a verdict of Not Guilty in favor of our client, the landlord, and awarded the guest no monetary damages.

Judgment on Award of Arbitration - Auto Fire

Peter Schoonmaker and Matt Cook obtained a Not Guilty award in the arbitration of a case seeking damages for the total destruction of a Range Rover caused by an incendiary fire. The named insureds were brothers, one of whom was living overseas. The brother who presented the claim forged his brother's signature on the Sworn Statement in Proof of Loss, submitted fabricated federal income tax returns in his brother's name, and posed as his brother during the course of the initial recorded statement. The claim was denied based upon material misrepresentation and intentional conduct in causing the fire. The arbitrators entered an award in favor of our client and the judgment is now final.

Summary Judgment - Professional Liability

Mark Ruda and Matt Cook obtained Summary Judgment on behalf of two insurance brokers in a professional malpractice lawsuit. The Plaintiff alleged that the brokers were requested to increase the policy limits three weeks prior to a fire loss and that their failure to do so constituted professional malpractice. In our motion for summary judgment, we argued that the Plaintiff could not establish a causal connection between the brokers' failure to increase the policy limits and the monetary damages allegedly sustained by the Plaintiff. The trial court agreed and ruled that since the insurer would not have increased the coverage under its underwriting guidelines, the Plaintiff did not sustain damages due to the brokers' failure to process the request.

Judgment on the Pleadings - Declaratory Judgment Action

Scott Gillman and Nick McCann obtained a Judgment on behalf of an insurer in a Declaratory Judgment Action seeking a judicial declaration that a commercial general liability insurance policy (CGL) and an umbrella insurance policy did not provide coverage for the defense or indemnification of a general contractor in a construction dispute. The underlying lawsuit against the general contractor alleged that he breached the implied warranty of merchantability due to construction defects. The trial court ruled that neither policy provided coverage for the defense or indemnification of the general contractor. The trial also court held that the alleged damage occurred only to the real property and fixtures related to the construction project, but not to the residents' personal property which may have triggered coverage under the CGL. The trial court's ruling is consistent with the general rule that Illinois CGL's will not provide

coverage for construction defects and resulting damage, if the damage pertains solely to the real property and fixtures associated with a construction project.

PLRB / IASIU - Presentation

Pete Schoonmaker recently spoke at the Property Loss Research Bureau (PLRB) Claims Conference in Boston, MA from March 17, 2013 to March 20, 2013. He presented a seminar entitled: "Fraudulent Additional Living Expense Claims, Loss of Use, and Business Interruption Claims" with co-presenters Larry Cholewin, SIU Regional Manager of MetLife, and forensic accountant Fred Kruse, CPA, CFE. The seminar provides an overview of the types of claims which can potentially give rise to fraudulent or fabricated loss of use, additional living expense or business interruption claims and key policy provisions related to same. There will be an encore presentation of the seminar given to the Illinois Chapter of the International Association of Special Investigation Units (IASIU) on March 29, 2013. Please contact us if you are interested in obtaining the written materials presented with this seminar.

NSPII - Presentation

Paul Festenstein and Matt Cook recently spoke at a training seminar for the Illinois Chapter of the National Society of Professional Insurance Investigators (NSPII) at State Farm Insurance Company's claims office in Downers Grove, IL on March 22, 2013. The speech is entitled: "Illinois Rules of Evidence - 2011 Codification - Why are These Changes Important to You as Professional Insurance Investigators?" The speech focused on the importance of obtaining key documents during the investigation of third and first party claims, and addressed how the recently codified Illinois Rules of Evidence effect the admission of these documents into evidence at trial. Please contact us if you are interested in obtaining the written materials presented with this speech.

CLM Magazine - Article Published

An article co-authored by Guy Conti was published by the Claims and Litigation Management Alliance (CLM) in the March issue of "Claims Management - Strategies for Successful Resolution", its monthly magazine. The article is entitled: "How to Handle a Hoarder". It focuses on strategies for dealing with the unique challenges encountered by claims personnel in the handling and investigation of voluminous personal property claims submitted by insureds who are "hoarders". Please contact us or CLM if you would like a copy of the article.

If you have any questions about these cases, publications, and speeches, or if you would like to learn more about our firm, please do not hesitate to contact the undersigned.

Sincerely,



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