

**Recent Missouri Insurance Cases of Note
from Missouri State and Federal Courts and the Eighth Circuit**

Exclusion of coverage for “wrongful conversion” in policy insuring against theft held to be ambiguous.

In *Columbia Mut. Ins. Co. v. Long*, 258 S.W.3d 469 (Mo.App. W.D. 2008), cattle owners had a policy insuring them against theft but excluding losses due to “wrongful conversion.” After their farm manager stole several cattle, their insurer admitted the cattle were stolen, but invoked the exclusion and denied the claim. The Missouri Court of Appeals found it “impossible” for property to be lost by theft without a conversion taking place, and held that an insurance contract promising something at one point but taking it away at another contains an ambiguity that must be resolved in favor of coverage.

Forced-place home insurer not required to pay on policy, due to mutual mistake concerning existence of homeowners coverage.

In *Herd v. American Security Ins. Co.*, 556 F.Supp.2d 992 (W.D. Mo. 2008), EMC Mort-

gage Co. purchased a forced-place policy from American Security after mistakenly believing a homeowner lacked insurance in violation of the mortgage. Actually, the homeowner had policies covering the home. Following a fire, the homeowner collected on those policies, which paid the balance of the EMC mortgage. The homeowner then learned of the forced-place policy purchased by EMC and tried to collect on it, but the court granted summary judgment in American Security’s favor under the mutual mistake doctrine, noting that EMC and American Security both based their bargain on the misconception that no underlying coverage was in place.



**Recent Illinois Insurance Cases of Note
from Illinois State and Federal Courts and the Seventh Circuit**

Facts stated in additional insured’s third-party complaint and “true but unpleaded facts” were sufficient to trigger duty to defend.

In *American Economy Ins. Co. v. DePaul University*, 890 N.E.2d 582 (Ill.App. 1 Dist. 2008), a woman filed a personal injury claim against additional insured DePaul in connection with work done by named insured Metrick Electric Co. DePaul tendered its defense of the complaint to Metrick’s insurer and filed a third-party complaint against Metrick, but the insurer denied it owed a duty to defend DePaul, filed a declaratory judgment

action, and asserted DePaul did not qualify as an additional insured and the court could not consider DePaul’s third-party complaint.

The trial court disagreed, granting summary judgment in favor of DePaul and finding the insurer had a duty to defend. The First District affirmed, holding that facts pled in DePaul’s third-party complaint, along with “true but unpleaded facts” the insurer learned during the defense of Metrick in the underlying lawsuit, triggered a duty to defend under an additional insured endorsement.

This Update is brought to you by the Insurance Committee of the Business Litigation Practice Group

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**Missouri Cases
(continued)**

Insurance broker with 40 years of experience in insurance industry not qualified to testify as expert in action to recover proceeds of subrogation claims.

In *Travelers Property Cas. Co. of America v. National Union Ins. Co. of Pittsburgh*, 557 F.Supp.2d 1040 (W.D. Mo. 2008), after an explosion at a utility's generating station, the utility and its primary insurer recovered funds in a subrogation action. The excess insurer then filed suit against the utility and primary insurer,

seeking to recover the subrogation proceeds. The excess insurer retained an expert with extensive experience in the insurance industry, but little in handling claims and excess coverage, and none in subrogation. Citing the expert's lack of experience with the specific type of claim involved in the case, and applying the *Daubert* standard stated in Federal Rule of Evidence 702, the court granted the utility's motion to strike the expert's testimony.

Broker with 40 years of experience in insurance industry did not qualify as expert under *Daubert* standards.

**Illinois Cases
(continued)**

"Innocent insured" doctrine did not apply in favor of wife whose husband burned down their home, because policy language was not ambiguous.

In *Aurelius v. State Farm Fire and Cas. Co.*, 2008 WL 3166333 (Ill.App. 2 Dist. Aug. 5, 2008), the policy stated it would be void "due to an intentional act of any insured," and "in such event the insurer will not pay you or any other insured for this loss." The Second District held that without the second statement, the policy would have been ambiguous for failure to clearly void the policy as to all insureds in the event of some improper behavior by any insured. Because the additional language was present, however, the insurer properly denied coverage.

Minor son of insured's fiancée could qualify as "family member" for purposes of uninsured motorist coverage provided by insured's policy.

In *Clayton v. Millers First Ins. Cos.*, 892 N.E.2d 613 (Ill.App. 5 Dist. 2008), the minor son of the insured's fiancée claimed he "was financially dependent upon" the insured, who claimed his relationship with the boy was of a "parental nature." The policy provided coverage to a "family member," a term defined by the policy to include a "ward." The trial court entered partial summary judgment in the insurer's favor, but the Fifth District vacated and remanded, finding the term "ward" ambiguous and refusing to limit it to a technical meaning.



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