



## GEORGIA INSURANCE LAW 2015

This month we summarize the insurance law cases issued in 2015 by the Georgia Supreme Court and Georgia Court of Appeals.

### Consent Clause

*Piedmont Office Realty Trust, Inc. v. XL Specialty Ins. Co.*, 771 S.E.2d 864 (Ga. 2015). The Georgia Supreme Court held that where an insurer refuses consent to a settlement, and the insured settles anyway, the insured failed to fulfill a condition precedent to coverage, and was precluded as a matter of law from bringing a claim for breach of contract and bad faith.

### Direct Action

*Mornay v. Nat'l Union Fire Ins. Co.*, 769 S.E.2d 807 (Ga. Ct. App. 2015). Under the Georgia Motor Carrier Act, a plaintiff may bring a direct action against a motor carrier. The Georgia Court of Appeals held a plaintiff cannot bring a direct action against a liability insurer where the motor carrier at issue is a medical transportation carrier and liability insurer.

### Pollution Exclusion

*Smith v. Ga. Farm Bureau Mut. Ins. Co.*, 771 S.E.2d 452 (Ga. Ct. App. 2015). The Georgia Court of Appeals ruled in a split panel decision that the pollution exclusion in a liability policy does not apply to lead paint claims. The case is pending on appeal to the Georgia Supreme Court.

### Stacking Policies

*Ayers v. Ass'n of County Comm'rs*, 771 S.E.2d 743 (Ga. Ct. App. 2015). The Georgia Court of Appeals held that three \$1 million policies may be "stacked" to provide \$3 million in coverage absent specific anti-stacking language in the policies.

## **Motor Vehicle Exclusion**

*Partin v. Ga. Farm Bureau Mut. Ins. Co.*, 770 S.E.2d 38 (Ga. Ct. App. 2015). The court held a farm liability policy did not exclude coverage for an accident involving the insured's all-terrain vehicle.

## **Insurance Agent E&O**

*Cottingham & Butler, Inc. v. Belu*, 774 S.E.2d 747 (Ga. Ct. App. 2015). The Georgia Court of Appeals held a retail agent may be liable for failing to procure insurance providing coverage for defense costs.

## **Appraisal**

*Zurich Am. Ins. Co. v. Omni Health Solutions, LLC*, 774 S.E.2d 782 (Ga. Ct. App. 2015). The Georgia Court of Appeals held an appraisal award in a commercial property insurance dispute must be vacated where the umpire began working for an independent adjusting company for the insurer during the appraisal proceedings.

## **Business Risk Exclusions**

*Dolan v. Auto Owners Ins. Co.*, 773 S.E.2d 789 (Ga. App. 2015). The Georgia Court of Appeals held that Exclusions (j)(6) and (j)(7) do not apply to work that has already been completed.

*Auto Owners Ins. Co. v. Gay Constr. Co.*, 774 S.E.2d 798 (Ga. App. 2015). The Georgia Court of Appeals held a general contractor was not covered as an additional insured under a subcontractor's policy for a construction defect claim, because the "business risk" exclusions would have barred coverage for the subcontractor.

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