



LIFE BEGINS

A Publication of the
Washington State Bar Association
Senior Lawyers Section

Volume 6

Fall 2004

Number 3

SAVE THE DATE!

Senior Lawyers Section

2005 ANNUAL MEETING & CLE SEMINAR

Friday, April 22, 2005

Seattle Marriott SeaTac Airport

By Robert A. Berst

How can we make the 2005 annual meeting and CLE seminar as exciting as the 2004 seminar? Each year, the entire committee works as a team to bring you new, exciting, and relevant programs. As those regular attendees know, your committee is not bashful about experimenting with unusual material.

But, enough of this technical stuff – we again decided to keep the seminar tuition at \$100 for section members, which includes the seminar, materials, lunch, social hour, and parking. We arranged for the top-of-the-line lunch served by the SeaTac Marriott. As he has done for many years, the reception immediately following the seminar will be hosted by one of our speakers, James C. McClendon, and the Pacific Financial Group, of which he is the president.

This is the only seminar where you will know most of those in attendance.

SEE YOU THERE!

In This Issue

| | | | |
|--|---|--|---|
| SAVE THE DATE! | 1 | 16 Tips For Effectively Managing Stress | 5 |
| Building an Elder Law Practice | 2 | Practical Pointers: Insurance Terminology Creates Common | |
| TREASON, by David Nevin (2001) | 3 | Misconceptions of Policy Provisions | 6 |
| What Ever Happened to Moral Re-Armament? | 4 | | |

Building an Elder Law Practice

By Milton W. Zwicker

The following article appeared in the American Bar Associate General Practice Magazine, March 2004, and is reprinted courtesy of the author, with our thanks.

Elder law isn't simply about writing wills and planning estates. It's about understanding and catering to the wants and needs of a special client group. It requires that you be "age aware" and develop an elder-friendly office, one that can help older clients with a range of legal and quasi-legal matters.

Knowing your market: Social dynamics. The primary step toward success in elder law is to adapt your thinking, and your marketing, to your unique client group. Elder law practitioners must know about the habits, likes, dislikes, desires, and needs of seniors. At the same time, always keep in mind that older people are not a homogeneous, one-size-fits-all group. Like other major market categories, this one has subsegments with its own individual characteristics.

Giving the right advice: Understanding the aging process. You must be knowledgeable in the various areas of law in which older people are likely to seek your advice. You should have substantive legal skills and knowledge in the following areas: wills, powers of attorney, estate planning, guardianship and administration, retirement village contracts and disputes, nursing home care, pension entitlements, reverse mortgages, elder abuse, and age discrimination.

However, lawyers must also bring knowledge of the elderly that allows them and their staff to ignore myths about aging and the competence of the elderly. They must also understand the afflictions of the elderly to figure out the difference between the physical versus the mental disabilities of clients. Older clients who are physically frail may be mentally robust and perfectly able to participate in decisions affecting their legal affairs. Understand that aging is associated with vision and hearing impairment; that retirement matters mean reduced income and changes in lifestyles; and that the death of a spouse may result in a decreased capacity to cope with problems.

Setting up consultations: Your work begins with you. It is important to have a sensitivity to clients' unique aging histories to help ensure effective communication and correct assessment of each one's legal needs. When scheduling client meetings, be aware of the individual's physical health and mental well-being. Many seniors have a routine medication regimen around which you should plan. Sometimes, for example, a client may be mentally alert for a short period after taking a medication. The alertness can quickly turn into grogginess or confusion. Make relevant information about the client's medical condition part of your client database - don't rely on your memory for the little things.

Being easily available: Accessibility and transportation issues. Pay special attention to the accessibility and decor of your office. Make sure that hallways and doorways are wide enough to accommodate wheelchairs and walkers. Avoid the use of throw rugs, plush sofas, and overstuffed chairs. Use chairs with straight backs and hard cushions, but with arms that are strong enough to support a person leaning on them.

Take the time to find out how clients handle their travel arrangements to your office. Avoid making appointments with older clients who rely on public transportation during peak traffic times. Inquire whether the client can drive herself or himself to your office. Let them know where there is adequate parking close to your office. Make clients aware that you do house calls and are willing to visit nursing homes, hostels, and hospitals as well.

Building the right communication skills. First impressions are critical, particularly with a nervous elderly client. Show your respect. Always greet your new clients with smile, a look in the eye, and a firm handshake. Immediately tell them how much you appreciate their coming in to see you. If it's your first meeting, tell the client a bit about yourself. It helps them understand that, despite the fact you're a lawyer, you're not that different from them.

Some older people are reluctant to deal with lawyers in general. Others are reluctant to share personal or private concerns. You must attempt to establish their confidence in your legal skills, as well as prove the information they reveal to you is confidential. Explain why it's necessary for you to take notes and, as a courtesy, ask for their permission to do so. Assure them that you will not share information with other family members without their consent.

Paraphrasing is a wise communication technique that enables you to check the correctness of information and instructions that clients give to you, while avoiding unnecessary repetition. It allows your older clients to rehear and clarify important aspects of the discussion. Moreover, it shows them that you are listening and are genuinely interested in what they have to say.

The pace of your activities is likely faster than that of your elderly clients. Adjust your pace to theirs. Be careful not to make them feel that you are rushing them. They will respect your timetable, but you must inform them at the start of an interview how much time you have available. Hearing and vision losses are common impairments of

continued on next page

Building an Elder Law Practice from previous page

many seniors. Be alert to how these impairments might affect interactions during legal consultations.

Some lawyers complain that older clients waste time by straying from the topic or engaging in too much social chat. Accept that this is how some seniors communicate, and learn to manage the situation. Specifically: (1) empathize with any concern the client raises, but do not indulge it; (2) use specific questions to focus the client's attention; and (3) politely discuss with the client how you can help him or her "stick to the topic."

It's also important to remember that a picture is worth a thousand words. For example, can you incorporate some visuals to portray to clients the information and data that represent a will? Many clauses in wills are boiler-plate legal terms that clients do not want to read. Is there a way to better present the information?

Tending to more than the case at hand. You also need to tie into formal and informal systems of social workers, psychologists, and other elder care professionals. They can assist you with issues related to serving older clients in your law practice. In addition, you should be able to refer non-legal problems to your developed network of other specialists. That means you must know when and how to make referrals, and to whom. The ability to refer effectively will increase your clients' trust and relieve you of the frustration of dealing with matters that are outside your area of expertise.

TREASON

by David Nevin (2001)

Book Review by Pete Francis

Mr. Nevin's novel is clearly labeled fiction. Yet it is a gripping and extremely well-written historically accurate narrative of a time when our nation was in great peril. During the Jefferson presidency Aaron Burr and General James Wilkinson, then the commanding general of the U.S. Army, plotted to break off Louisiana and the western states from the United States, to form a separate country.

The major characters are all actual persons – especially James Madison, the main hero of the story, and Alexander Hamilton, Thomas Jefferson, Dolly Madison, and John Randolph, as well as a host of other historical figures.

The plot twists and character development drive the story and make it a page-turner as well as the best fiction, but the plot twists are historic reality.

I liked *Burr* by Gore Vidal, but this novel provides more historical detail and is even more enjoyable to read. Mr. Nevin invents some fascinating conversations and both pondering and emotional reactions by the characters, yet all is reasonably likely based on what actually happened. We get some understanding of the issues and principles which motivated so many of our national leaders, in sharp contrast to Burr's fatal flaw, which was his lack of any principle beyond his personal ambition and desire for self-aggrandizement. In the end, one sympathizes with the tragedy of such a brilliant and talented man being controlled by such childish emotional needs. This, too, appears to be an assessment of Burr's character, which is historically accurate and consistent with other sources.

Read David Nevin's *Treason* for fun. You will enjoy it, and at the same time learn a great deal about the early development of our country.

2004-2005 Senior Lawyers Section

Officers

Chair *Pete Francis, CLE Co-Chair*
 Chair-elect *G. Lawrence Salkield*
 Secretary *Dudley Panchot*
 Treasurer *Joanne Primavera,
 CLE Co-Chair*

Committee Members

*Robert A. Berst, CLE Co-Chair,
 Editor Life Begins*
Philip DeTurk
Roderick Dimoff
Wes Foss
Frederick O. Frederickson
Herbert H. Freise
Jerome L. Jager
Kenneth J. Selander
Thomas S. Wampold

WSBA SERVICE CENTER

800-945-WSBA (9722)

206-443-WSBA (9722)

questions@wsba.org

Monday-Friday, 8 am to 5 pm

What Ever Happened to Moral Re-Armament?

By Phil DeTurk

In May 2003 I attended an Elderhostel program on Mackinac Island, Michigan, which is a two by three mile isle located in the Mackinac Straits between Lower and Upper Michigan. Ostensibly, the purpose was fourfold: to learn the island's history, environment, architecture, and ambience. It was while pursuing the third item that I discovered something amazing.

All 39 of us – 41 if you include our instructor and the coordinator – were huddled together on East Bluff Road looking southward toward Lake Huron and the unusually built resort about fifty feet below us.

We had finished examining the exteriors of the twelve or so "cottages" that existed on the north side of that street. Those opulent residences had mostly existed for over 100 years; each presented a unique form of construction, primarily of the Queen Anne style.

Immediately below us was a tower, which presented a fifth-floor roof almost reaching to our level. Next to it were a number of buildings, one of which was somewhat similar to a gymnasium. Our learned instructor informed us that this was once the island's headquarters for Moral Re-Armament; that the square building was an immense studio used for filming the material that the organization produced. (Propaganda one might say.)

In fact, he added, "When the movie *Somewhere in Time* was filmed on the island, the studio was used to do the interior shots for that Christopher Reeves-Jane Seymour romance."

I had not heard or thought about Moral Re-Armament for many years. I wondered what had happened to it?

Upon my return from the island, which is also where yacht races occur every July, primarily to Chicago on Lake Michigan, I decided to learn more about MRA.

This movement was begun by Frank Buchman, an ordained Lutheran minister, somewhere in the late '20s or early '30s. Originally called the Oxford Group, it espoused a willingness to obey, comparison of thoughts with the highest moral standards, discussion with friends who had similar beliefs, and the teachings of the church. (*On the Tail of a Comet*, Garth Lean, Helmers and Howard, 1988, at page 76.)

Later called MRA, it sought and found a central place for its many meetings on Mackinac Island where the Island House was rented for a dollar a year. Here Buchman's teachings were presented and plays given, beginning in 1942. (*Tail*, at page 307, and see picture of the island in supplement following page 276), in what was called the training center.

The housing on the island was then inadequate, so at times the Grand Hotel, with its world-famous long porch, was utilized in total (*Tail*, p. 493). In 1954, land became avail-

able on the southeast corner of the island. Construction began on a theater and other buildings in 1955 (*Tail*, p. 494) and continued into the late '50s.

Buchman died in 1961, and his successor, Peter Howard, in 1955. By 1970, MRA was almost non-existent in the United States. Yet this strongly anti-communistic and homophobic organization, which, along with its leader, was highly controversial during its years of ascendancy, spawned two important independent creations.

One was *Up With People*, which began in 1965, but left MRA in 1967. (*AA: Cult or Cure?*, by Charles Bufe, Sharp Press, 1991 at page 30-31.)

This frenetic musical movement played in Washington in past years with youngsters purportedly paying for the right to be involved and perform for you. As an attendee many years in the past, I left with a happy feeling; perhaps the extravaganza was the forerunner of *Riverdance*, which shares some of the enthusiasm of its predecessor?

But it was the establishment of "Alcoholics Anonymous" that has to this date preserved the teachings of MRA. Both Bill Wilson and Dr. Robert Smith, the founders of that "salvation for alcoholics," were involved in the Oxford Group Movement (*AA*, at page 35).

"The twelve steps are the backbone of the AA Program... they were drawn directly from the teachings of the Oxford Groups, the evangelical Christian movement to which Bill Wilson and Dr. Bob Smith belonged, and in which AA (though not under the AA name) functioned until the late 1930s" (*AA* at page 62).

Wow, did I learn a lot! From the simple mention of the background of what is now the Mission Point Resort to the formation of AA as a result of Buchman's founding of the Oxford Movement. So when I asked what happened to MRA, I learned that some of its principles live on in AA.

This has not been intended to be an exposé of anything. It has not been presented in a judgmental fashion, although such could easily have been done. It is factual about a movement that was quite popular when most of us were young practitioners; a group to which perhaps some of us even belonged:

Do you have a "What Happened to ..." story? For instance, to Jack Armstrong? , to the 45 inch record?, to Horace Heidt and his Musical Knights; to Gardner Ted Armstrong and his World Church of God? Or to the Soriano Brothers after they sold the Seattle Pilots? Why not commit it to writing and send it to us so that we can become enlightened?

16 Tips For Effectively Managing Stress (without resorting to antacids)

By Lori L. Wheat

The following article appeared in *De Novo*, February 2004,
and is reprinted courtesy of the author and the Young Lawyers Division, with our thanks.

I recently read an article directed at young lawyers that included the "practice tip" to "Always carry antacids." Has the practice of law been reduced to such a high level of stress that, along with our bar membership card, the other absolute necessity is a roll of Tums? Perhaps there are more effective ways to remain psychologically healthy amidst an often-stressful profession. I offer the following tips because I have found them helpful in my daily life.

1. Foster good relationships with professional peers.

I am a member of the Washington Young Lawyers Division Membership Committee, and one of the most beneficial aspects of my membership has been commiserating with colleagues who share my professional woes as well as exhilarating in professional glees.

2. Practice law in an ethical manner, and remain true to your values. We are not alone in our quest to practice law ethically. There is a wealth of resources available. If you find yourself in an ethical dilemma, consult the most recent edition of the Washington Rules of Professional Conduct, which are available at no cost online through the Washington State Courts website at www.courts.wa.gov/court_rules under "Rules of General Application." Also, consult the formal and informal ethics opinions which are available for free through the WSBA website (www.wsba.org). The Unpublished Informal Ethics Opinions database is searchable and has a wealth of information. As published on the WSBA website, Washington lawyers may call the Ethics Line (206-727-8284) and speak with professional responsibility counsel who will discuss the situation with the caller to help clarify the ethical issues involved so that the inquirer is able to make a decision consistent with the requirements of ethical behavior.

3. Limit work hours to a reasonable amount. Linda Breen Pierce, former attorney and author of *Choosing Simplicity* and *Simplicity Lessons*, suggests in her books that, in order to have time for the truly important things in life, individuals ought to limit their work hours to no more than 30 hours per week (20 hours per week if s/he has children). Working 20 to 30 hours per week frees up time and energy for other priorities in our lives, such as spending time with friends and family, providing services to others such as *pro bono* legal work or caring for aging relatives; and simply getting enough sleep, exercise and nutritious food to maintain our health. You may be thinking, "sure, that would be great, but I could never get away with working only 30 hours (or less!) per week!" However, with a bit of creative thinking and an open mind, it can be done. Being able to

work less than the traditional workweek may require a transition in your career. For example, I chose to open my own family law practice a year and a half ago, in part so that I could limit my work hours to 30 hours or less per week. Of course, I do not earn the lucrative income I could if I chose to work longer hours, but the trade-off in terms of quality of life is more than worth it to me.

4. Exercise regularly. The best advice I was given (and now pass on to others) during preparation for the bar exam was to exercise regularly as a stress-management tool. While studying, for the bar, I was in the best shape of my life, running at least three miles almost daily. Exercising made a notable difference in my ability to effectively prepare for the bar exam. Although there apparently is less stress in my life now (I could likely barely run a mile once a week), my regular long walks and occasional hikes help reduce stress.

5. Spend time in nature. Connecting with nature is therapeutic and often puts problems in perspective. A few months after opening my practice, the stress was beginning to catch up with me. A fellow sole practitioner and I trekked down to Mt. Rainier, and I marveled at how being amongst the towering pine trees and falling snow was a wonderful retreat from the practice of law. I returned feeling relaxed and refreshed.

6. Sit quietly at least a few minutes each day. Sitting quietly clears the mind. Near my home, there is a Seattle city park with a breathtaking view of the bay and Olympic mountain range. I often walk to the park and sit quietly to enjoy the beauty of where I live.

7. Consider using public transportation or bicycling. Is anything more stress-inducing than being stuck in traffic? In Seattle, I choose to use public transportation rather than cluttering the streets with another car. Leaving the driving to someone else, I enjoy reading a book or simply gazing out the window for decompression time. Even better, bicycling would incorporate exercise into your commute and free up time you might have otherwise spent at the gym.

8. Surround yourself with people who add to your energy rather than drain it. Pay attention to whether you feel energized or depleted after spending time with another. Foster relationships that make you feel positive, and allow energy-sapping relationships to consume less (or none) of your energy.

9. Spend time with a pet. Pets are proven stress reducers. Just seeing a kitty contentedly curled up near a

continued on next page

Practical Pointers: Insurance Terminology Creates Common Misconceptions of Policy Provisions

By Larry V. Wagner

The following article appeared in the Real Property, Probate & Trust, Spring 2004, and is reprinted courtesy of the author, with our thanks.

In drafting the insurance provisions within leases, deeds of trust, and other documents, our objective is to correctly express the agreement of the parties on insurance-related matters and not to confuse or muddy the water as to what was meant. None of us wants to be guilty of committing a "Nova." For those of you who don't recall, Chevrolet came up with a model car and called it the Nova. When it went on sale in Central and South America, the car sold poorly, possibly because "Nova" means "it doesn't go" in Spanish.

Like Spanish, the insurance industry has its own unique terminology that, if not understood, can lead an attorney to inadvertently commit a "Nova." A classic example of this is the use of the term "casualty." Casualty often appears in a lease in the section requiring one or both of the landlord and tenant to maintain first party, direct physical

damage property coverages. Certainly, if one uses a dictionary definition of casualty, the term refers to "a disastrous accident" or events with related meanings. However, in my industry, insurance is often referred to as "Property & Casualty" insurance. Property insurance is the first party direct physical damage coverage that is written on buildings, personal property, and other similar exposures - what one might normally think of as "casualty" insurance. "Casualty" insurance, on the other hand, refers to third-party legal liability coverage, commonly referred to as commercial general liability. Not a serious problem, but illustrative of the need to know what is intended and how to express it. While both areas of insurance coverage, property and casualty, are fertile ground for terminology confusion and cov-

continued on next page

16 Tips For Effectively Managing Stress from previous page

sunny window instantly makes me feel more relaxed. (Caveat: Unless you have time to seriously commit to properly caring for a pet of your own, do not take on such a role. Instead, consider offering to pet-sit or take a friend's pooch for a walk. You'll strengthen your friendship and your health.)

10. Limit exposure to unnecessarily negative messages. On a daily basis, the popular news media bombards us with sensationalized, negative messages. In his book, *Feeling Good*, Dr. David D. Burns points out that we should selectively allow negative messages into our lives based on whether they help us avoid danger or we actually plan to take action to resolve the problem. After tuning out the news for a few days, slowly return to only those news programs you truly value.

11. Spend quality time with those you love. Remember that, at least in part, you are working hard in your career so that you may enjoy time with your friends, family, and/or partner. Take the time necessary to nourish these important relationships.

12. Maintain an appropriate level of distance from your work. Our clients' problems are not our personal problems; rather, they are our professional problems. It is a disservice to our clients as well as us and our families to lose clarity and professional judgment by personally entangling ourselves in work issues that should be left at the office.

13. Schedule time for personal interests outside the legal field. I find gardening extremely rewarding on a variety of levels. I know of an attorney who regularly makes time for his fellow bagpipe musicians. Do whatever makes your heart sing.

14. Allow yourself the occasional indulgence. Enjoy a rich chocolate dessert. Shamelessly spend your Saturdays watching college football. Light a scented candle. Take a long nap in the middle of the day, and awaken feeling refreshed sans guilt.

15. Keep your personal finances in order. Nothing will impinge on a good night's rest more than looming consumer debt or the knowledge that you are not appropriately planning for future financial needs. The more financially secure we are, the more freedom we have in terms of how we may choose to spend our time, the most precious commodity of all.

16. Protect your health. Last but certainly not least, schedule time for preventative health care as well as routine check-ups and appropriate medical care.

Armed with these tips, perhaps you will be able to eliminate antacids from your list of necessary business supplies. Hopefully, any correlation between increasing bar membership and rising antacid sales will dissipate into a distant, best-forgotten memory.

Practical Pointers: Insurance Terminology Creates Common Misconceptions of Policy Provisions
from previous page

erage misconceptions, this article will highlight some trouble areas that arise in creating documents with provisions for commercial general liability insurance.

A. Commercial General Liability

1. "Occurrence" vs. "Claims Made" Policies. General liability insurance comes in two types: an "occurrence" form or a "claims made" form. Because an occurrence form policy will cover incidents that occur during the policy term regardless of when a claim is asserted and a claims made form policy will cover only incidents as to which claims occur and are made during the policy term, an occurrence form will almost always be preferable and the best choice when drafting the insurance provisions for a lease or similar document.

2. Combined Single Limit. It is very common in today's insurance world for general liability insurance to be written with what is called a "combined single limit." That means that there is one limit per occurrence for all bodily injury and/or tangible property damage claims arising out of the incident. Years ago it was far more common to see split limits where there was one limit for each person, another for all the people in the aggregate, and a third for property damage. In most instances, it is preferable to require a combined single limit in your documents.

3. Annual Aggregates. In addition to per-occurrence limits, commercial general liability policies contain annual aggregates with respect to limits. Because these aggregates can impact the available per-occurrence limit, it is prudent both to know what they are and to require that general aggregates apply on a per location basis. For contractors, aggregates should apply on a per project basis. (This general aggregate per-project or per-location has no bearing on the products/completed operations aggregate in the policy.)

4. Contractual Liability Coverage. Contractual coverages in the third-party legal liability section of insurance provisions warrant mention. Inevitably, these sections contain some phraseology that states that the party providing the insurance is obligated to have contractual liability covering all of the party's indemnity obligations. Contractual liability coverage in a commercial general liability policy *does* apply to indemnities. However, indemnifications are usually broader than the grant of coverage given by the liability form. Therefore, you cannot buy contractual liability to insure *all* obligations under an indemnity provision in an agreement because the commercial general liability policy contains limitations and exclusions. This means that it is realistic to require the contractual liability be carried, but in most cases it is impractical to require that contractual liability be carried to specifically insure all obligations assumed under an indemnity. Examples of liabilities not

covered would include intentional acts, pollution, sexual harassment, and non-owned aircraft.

5. Deductibles-Per Claim vs. Per Occurrence. Deductibles, whether the form of coverage being used is an occurrence form or a claims made form, can still apply on a per claim basis as opposed to per-occurrence basis. If a deductible is written on a per-occurrence basis and a claim is made on a general liability policy, whether it be for bodily injury or tangible property damage, the deductible applies once, no matter how many claims arise out of the insured occurrence. Deductibles on a per-claim basis, on the other hand, apply to each and every claimant whether the policy involved is itself an occurrence or a claims-made policy. Therefore, for general liability coverage, deductible requirements should specify whether they are intended to be written on a per-occurrence or a per-claim basis.

6. General Liability Additional Insureds. In most cases, additional insured (AI) issues will pertain to liability insurance. Edition dates of forms (effecting AI status for products/completed operations) and primary-noncontributory are current hot topics. AI status for other than "ongoing operations" has, in the hard market, become a rarity. If available, it will often involve more premium. Noncontributory aspects are becoming less troublesome. It remains prudent to require that general liability additional insureds be on a primary-noncontributory basis. Loss payable forms are specific to first-party direct physical damage coverages and therefore, you would not require that someone be a loss payee on general liability coverages.

B. Failure to Procure Insurance

In a lease, another provision that can lead to difficulties is the section dealing with a tenant's failure to procure or maintain insurance. Most often, this section states that if the tenant fails to procure and maintain the required types or amounts of insurance then the landlord may purchase it for the tenant and require that the tenant reimburse the landlord for the cost. In some cases, this can create problems. If the landlord buys the tenant's insurance, the landlord may in fact net the coverage written exactly as it was, only to find out after an incident that the coverage obtained by the landlord left some risk uninsured or that there is some other problem with coverage. The landlord could then find itself facing a claim from the tenant to the effect that once the landlord undertook to provide the tenant's insurance, the tenant relied upon the landlord to procure adequate insurance. In such circumstances, a requirement intended to protect the landlord instead exposes the landlord to potential liability. It may therefore make more sense to write these sorts of provisions such that if the tenant does

continued on next page

This is a publication of a section of the Washington State Bar Association. All opinions and comments in this publication represent the views of the authors and do not necessarily have the endorsement of the Association nor its officers or agents.

WASHINGTON STATE BAR ASSOCIATION
Senior Lawyers Section
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330

Bulk Rate
U.S. Postage Paid
Seattle, WA
Permit No. 2204



Printed on recycled paper

Practical Pointers: Insurance Terminology Creates Common Misconceptions of Policy Provisions *from previous page*

not procure or maintain the required insurance, the landlord may, but is not required to, procure any insurance it feels it needs to protect itself, with the tenant being responsible to reimburse the cost. The idea is to permit the landlord to protect itself if the tenant doesn't, but not to have the landlord buy the tenant's insurance for it.

C. Duration of Obligation

The availability and cost of insurance products can affect insurance provisions. It is reasonable and prudent for the drafting attorney to keep in mind that the insurance market is a very cyclical industry. The availability of limits, the efficacy of the terms and conditions of policies, and the cost of certain coverages can be widely available at high limits for a moderate cost one year and be cost prohibitive or unavailable the next. It may be appropriate to include provisions in documents that allow discussion and negotiation based on current insurance marketplace conditions. And remember that the insurance contract renews with a

change in terms and conditions and available limits every 12 months.

As noted earlier, the topics in this article include only issues arising in commercial general liability insurance. Property insurance brings to the table its own set of issues, with such gems as the difference between earthquake and earth movement coverage, or the meaning of terms like "fire and extended coverage" or "all risk," not to mention the question of what *is* an insurable value? Other kinds of insurance that are not even mentioned here - like boiler & machinery coverage, United States Longshore and Harborworkers Act insurance, liquor legal coverage, protection and indemnity (marine) insurance, and aircraft insurance - have unique issues as well. It is always prudent that the insurance brokers for the parties be involved in discussing the appropriate terminology and the implications of coverage decisions and of how the document is drafted.
