



July 2013

***Dear Friends
and Colleagues***

As summer rolls in, things have certainly been heating up at Zupkus & Angell. We happily report celebrations and victories, and found time for a few legal updates for our esteemed friends and clients along the way. We hope you enjoy this second installment of our quarterly newsletter. Please let us know what interests you so that we can include it in the next issue! Also, be sure to enter our contest for your chance to win a \$25 gift card.



Happy Summer!

Sincerely,

Zupkus & Angell, P.C.
(303) 894-8948

***Z&A Seeking to Make Strides in
Ovarian Cancer Awareness and
Research***



On Saturday June 1, 2013, twenty Zupkus & Angell employees, family members, and friends participated in, and raised funds for, Jodi's Race -- a 5K walk and run

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***Awards &
Appointments***

Zupkus & Angell is proud to announce that partner, **Kristi Lush**, has been appointed by the American Bar Association as the *YLD Liaison* to the Section of Tort Trial and Insurance and the *Vice-Chair* to the Transportation Litigation Committee. She also won first place in a 5K race while at the 2013 Annual TLA conference in Napa! Congratulations, Kristi!

seeking awareness about ovarian cancer through advocacy, education, and support. Jodi's Race and the Colorado Ovarian Cancer Alliance are near and dear to the hearts of Zupkus & Angell, as Donna Zupkus, wife of partner Bob Zupkus, was diagnosed with ovarian cancer in 2011. Last June, Donna and many members of the Zupkus & Angell family walked together in support of her battle with ovarian cancer. Unfortunately, Donna lost her battle on January 18th of this year. Please consider joining us next year to walk in Donna's memory and in an effort to find a cure for cancer.



Colorado Supreme Court Creates A Slippery Slope In Grease Pollutants Coverage Opinion



By: Dina Bernardelli

In *Mountain States Mutual Casualty Company v. Toinestad, et al.*, 296 P.3d 1020 (2013) ("Hog's Breath"), the Colorado Supreme Court has set a new precedent on what is a pollutant under the standard commercial general liability (CGL) policy pollution exclusion in a holding that is both beneficial and harmful to insurers. In a significant shift from prior case law, it is the amount, rather than the nature, of the substance (cooking grease) that triggers the pollution exclusion clause.

The insured, Hog's Breath Saloon & Restaurant, maintained a practice of negligently dumping water with cooking grease into the city sewer system. It was determined that this practice resulted in a five to eight foot clog of the city sewer at a nearby manhole. Two city workers discovered and were clearing the clog when they were overcome by poisonous hydrogen sulfide gasses built up behind the clog, fell into the manhole, and were injured. The employees filed suit against Hog's Breath, who tendered the claim to its insurer, Mountain States Mutual Casualty Company ("Mountain States").

Mountain States (represented by Zupkus & Angell, P.C.) brought a separate declaratory judgment action against Hog's Breath in federal court, and prevailed on the finding that grease was a pollutant falling within the policy's pollution exclusion clause.

Read the article in its entirety at: www.primerus.com

Friend Request Denied: Colorado

Summary Judgment Victory

Zupkus & Angell was hired as defense counsel for a national security company in a personal injury matter. The security company contracted to provide security services to a Colorado hospital. During this time, a nurse was attacked in one of the hospital's parking lots. The nurse filed a workers' compensation claim stemming from the attack. The nurse's workers' compensation carrier then filed suit against the security company in the form of a subrogation action.

Zupkus & Angell argued in summary judgment that Colorado courts have never expanded the duties of a private security provider to include the entire duty of the landowner, and therefore, the security company owed no duty to the nurse. The trial court agreed and granted Zupkus & Angell's motion for summary judgment, ruling that "based on the factual circumstances surrounding the attack . . . [and the nurse's] failure to request a security escort . . . [the security company] had no duty, pursuant to the terms of the service contract, to protect . . . [the nurse] from injury"

While Zupkus & Angell prides itself

Passes New Law Protecting Social Media Privacy in the Workplace

By: Muliha Khan

Employers commonly permit employees to access their Facebook accounts while at work. In fact, employers even frequently request that employees provide them with access to their Facebook accounts. Employers visit individual Facebook pages occasionally to ensure they do not feature offensive posts or inappropriate pictures. The use of historical and current information from social media accounts is on the rise in lawsuits, including those against employers. So, an employer requesting access to an employee's social media account seems appropriate, right? Well, think again.



Colorado is one of several states that recently enacted laws limiting an employer's access to an applicant or employee's social media account. H.B. 1046, 69th Gen. Assemb., 1st Reg. Sess. (Colo. 2013). Pursuant to this new law, an employer cannot require access to an employee's social media accounts. Employers are also prohibited from monitoring employees' social media accounts in other ways such as requiring the employee to add the employer as a contact or forcing the employee to change privacy settings to make the social media account public. Under this new law, applicants are treated the same way as employees. In other words, asking an applicant to provide access to a Facebook account, which can be a common source to check for information before hiring, is now a big no-no.

Of course there are exceptions to these rules. Specifically, the new law does not apply when the employee has improperly downloaded the employer's proprietary information or financial data. Also, this law does not apply to the Department of Corrections, County Corrections Departments, or any state or local law enforcement agency. Clearly, the Colorado Legislature felt it was necessary to allow certain employers to continue monitoring their employees' social media accounts.

Failure to follow this new law can be expensive for an employer. Violations are to be reported to the Colorado Department of Labor, and an employer can be fined up to \$1,000 for the first offense and up to \$5,000 for each

on being a trial firm, we are always pleased when we can prevent the cost and stress of trial.

Free Webinar

Tune in on Tuesday, October 15 at 11:00 a.m. (MT) for a free webinar on Avoiding and Minimizing Construction Defect Claims, presented by Dina Bernardelli, Esq. and hosted by the International Society of Primerus Law Firms. More details to come at www.primerus.com, or contact Amy Kempster, akempster@zalaw.com or (720) 208-2739, and we will update you with the latest on this event!

Is there a particular topic you would like to see covered in a webinar, CE, CLE, or article? Contact Dina Bernardelli to discuss, dbernardelli@zalaw.com or (720) 208-2766. We would love to address issues of particular interest to our readers and clients!

Contest!

Dina Bernardelli is one of our newest partners at Zupkus & Angell. Can you guess which of these factoids about Dina are two truths and which is a lie? Click [here](#) to read her biography for hints.

1. Dina is both a Notre Dame Golden Dome and a Boston College Legal Eagle.
2. Dina's esteemed lineage includes the infamous Black

subsequent offense.

Clearly Colorado is paying attention to the impact of social media in the workplace. Arkansas, New Mexico, Utah, and Washington are among the states that have enacted similar legislation for purposes of protecting an individual's privacy. Bottom line: if you are an employer remember to check yourself before you try to electronically check your employees or potential hires.

If you seek specific legal advice with respect to the subject matter of this article, please contact Muliha Khan, 720-208-2750 or mkhan@zalaw.com.

Law Day



"The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew and act anew." - Abraham Lincoln

May 1st was Law Day, and Zupkus & Angell celebrated in style. This year's theme revolved around one of our nation's most famous lawyers - President Abraham Lincoln. After a hard fought family feud style trivia game involving law in history, pop culture, and practice, "Team Zupkus" beat "Team Angell" in a close, but controversial victory.

Did you know. . . at Zupkus & Angell, P.C., our attorneys are experienced in many areas of insurance and individual client defense including employment law, transportation, personal injury, insurance coverage, and appellate work. Bob Zupkus is also an experienced expert witness on insurance bad faith, coverage, and legal professional liability issues. We are also available to provide continuing education classes and presentation on topics of your choice. For more information contact us today at (303) 894-8948 or visit our web site at www.zalaw.com.

Beard the Pirate.

3. Dina has lived in Italy and Holland, but doesn't speak a lick of Dutch.

Send us your guesses and a note on how we can better serve you or what you like about Z&A, and you could win a \$25 gift card to either Starbucks or Home Depot.

(winner will be chosen by random drawing in the event of multiple correct guesses)

Thank you to all who participated in last quarter's contest about Muliha!

The bluff was:

Muliha was born in Tripoli, Libya as her family was stationed there in the 80s.

Muliha was really born in Chatham, Kent, England!

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