

KDDK ADVANTAGE *Newsletter*

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Environmental Law: Insurance Coverage

Address Possible Environmental Issues Quickly; Recovery Rights May Be Limited

by Monica Edwards



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Environmental legislation proposed during the 2014 Indiana Legislative Session was a shot across the bow to Indiana insureds. As originally introduced, HB1241 would have drastically impacted environmental insurance coverage in Indiana for all those holding title to real estate.

The proposed legislation was an attempt to enforce the pollution exclusion clauses in Commercial General Liability policies in Indiana both retroactively and prospectively.

This proposed legislation undermined the case law precedent established by the Indiana Supreme Court's 1996 decision in *American States Insurance Co. v. Kiger* that rendered the absolute pollution exclusion unenforceable in Indiana due to the ambiguous language in the exclusion. This ambiguity was construed in favor of the insured by the Court, and has facilitated Indiana insureds' recovery for environmental claims associated with their property since such time. While the *Kiger* decision has been repeatedly upheld, we know the pollution exclusion will continue to be tested by insurers and insureds alike.

We do not know, however, whether the next proposed piece of legislation will survive or whether the next modification to the pollution exclusion will withstand the Court's scrutiny to limit an insured's right to recover. To avoid any limitation on an insured's rights, prospective commercial real estate buyers and sellers should accelerate their actions to address possible environmental issues, especially former gas station, industrial and dry cleaner sites.

For additional information about this or any other environmental law matter, please contact Monica Edwards at medwards@KDDK.com or (812) 423-3183. ♦

Litigation & Trial Services: Premises Liability

Where (Your) Sidewalk Ends...

by Greg Freyberger



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With last winter's cold temperatures and unusually high snowfall amounts, the number of slip and fall accidents on Tri-State sidewalks was high. For business owners, this gave rise to the question, "Am I responsible for a slip and fall injury?" The answer may depend on whether you own your business property or rent it, whether it is located in a private shopping center or on a city thoroughfare, and whether you have contracted with any additional entities for maintenance such as snow and ice removal.

For instance, if your business is on a city thoroughfare, it is likely that you don't owe the casual pedestrian a duty to provide for cleared sidewalks. This could even be true if there is a City ordinance requiring you to provide such rights of way.

If a business owner maintains a business in a private retail space, however, the analysis may be different. This situation typically involves issues of landlord-tenant law and to which party the duty to clear sidewalks belongs. The duty to the public exists as the public is generally a business invitee rather than a general pedestrian. Invitees are owed a duty of reasonable care by the business owner and potentially the landowner, and therefore, the importance of routine ice and snow removal increases.

If you have questions about the law in this area, please contact litigator Greg Freyberger at gfreyberger@KDDK.com or (812) 423-3183. ♦

NOTE:

Unabridged versions of these and other articles are available 24/7 at www.KDDK.com/blog. News is posted regularly, so check back often!

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Special Message to Health Care Community**Boston Marathon a Reminder of Service**

by Ted Barron



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As an attorney who specializes in health care law, I have had the privilege of representing hospitals and physicians on a daily basis throughout my legal career. I spend most days strategizing with and counseling health care clients, negotiating transactions, attempting to draft the perfect legal contracts and assisting them in complying with the many regulatory requirements that govern the health care industry.

Having run the Boston Marathon in 2013 and witnessed the bombings first hand, and having traveled to

Boston to run the historic 118th Boston Marathon on April 21, 2014, I am reminded of the heroic acts of the first responders, hospitals and physicians who treated the wounded and dying in Boston in the aftermath of the bombings.

I am grateful not only for what they did last year in Boston, but for what our local health care providers do each and every day. I am proud to serve as legal counsel to those who provide such a significant service to our community. ♦

KDDK News**Crystal Wildeman Receives Up and Coming Lawyer Award**

KDDK attorney Crystal Spivey Wildeman has been honored as an Up and Coming Lawyer

by *Indiana Lawyer* magazine. This distinguished recognition is part of *Indiana Lawyer's* Leadership in Law awards, which acknowledge Up and Coming Lawyers and Distinguished Barristers statewide each year.

As indicated by *Indiana Lawyer*, Up and Coming Lawyers demonstrate achievement in law, involvement in the profession, and support of the community.

Crystal is a civil litigator and defense trial attorney admitted to practice law in Indiana, Illinois and Kentucky. She is actively involved with Youth First, Inc., ARC Child Life Center, A Network of Evansville Women (ANEW), Young Professionals Network, and Junior League of Evansville; and she is a Leadership Evansville program alumnus. ♦

**Labor & Employment Law: Background Checks****A New Must-Read for Employers**

by Carrie Mount Roelle



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The Equal Employment Opportunity Commission and Federal Trade Commission jointly issued informal guidance regarding the legal pitfalls employers face when making personnel decisions – including hiring, retention, promotion and reassignment – based on background checks. The Technical Assistance Document (TAD) for employers is entitled "Background Checks: What Employers Need to Know." A corresponding TAD for employees was also issued. Links to both TADs are available at www.KDDK.com/blog/.

In addition to addressing the anti-discrimination aspect of an employer's use of background checks, the TADs also focus on the requirement that employers comply with the Fair Credit Reporting Act (FCRA) when using a third party to perform background checks. Obtaining criminal background checks without the required notice and authorization can lead to costly lawsuits for employers.

For additional information, please contact labor and employment law attorney Carrie Roelle at croelle@KDDK.com or (812) 423-3183. ♦

KDDK News**Additional KDDK Attorneys Licensed to Practice in Kentucky, Illinois**

Congratulations to Anthony K. Glenn, a KDDK labor and employment law attorney, for passing the Kentucky Bar Examination and Patrick C. (Pat) Thomas, a KDDK civil litigator and defense trial attorney, for passing the Illinois Bar Examination. Anthony and Pat both joined KDDK and were admitted to practice law in Indiana in 2013.

"An ever-increasing number of KDDK clients have headquarters or operations not only in Indiana, but throughout the Midwest, across the nation and around the world," said Brian P. Williams, a KDDK Co-Managing Partner. "Anthony and Pat pursuing licensing outside of Indiana is consistent with our commitment to ensure that we are positioned to meet the unique legal needs of each client."

KDDK now has six attorneys licensed to practice in Kentucky, and six attorneys licensed to practice in Illinois. ♦

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