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April 04, 2006

Welcome to the April 2006 issue of *Covered Events*. This edition brings you over 40 case summaries from 19 jurisdictions. It also features articles from California member Barry Zalma regarding how an insured's actions can impact an insurers' subrogation rights and coverage obligations and Oregon member Ron Clark concerning enforcing policy limitations after coverage is bound, but before the policy is issued. We continue to receive faithful contributions from new and existing DRI members and encourage our state liaisons to regularly submit case summaries and articles relevant to their particular jurisdiction. Keep your contributions coming and remember that they are a great way to showcase your firm and practice.

This issue also welcomes new *Covered Events* editor, Matthew Haar of Saul Ewing in xml:namespace prefix = st1 ns = "urn:schemas-microsoft-com:office:smarts" />Harrisburg, Pennsylvania. Please get your submissions for the next issue to Matt by May 10, 2006 at [MHaar@saul.com](mailto:MHaar@saul.com). The submissions should be in Word format similar to the summaries in this issue and with a link to the case if possible.

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## Enforcing Exclusions and Limitations Before and Policy is Issued

Oregon Revised Statutes provide that a property and casualty policy should be formally issued to the insured within 90 days of the coverage being bound. (ORS 742.043.) In the period after the coverage is bound, but before the policy is actually issued, it is the binder which provides the coverage even though the exact terms of the coverage are not expressly set out in the binder itself.

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It happens occasionally that a carrier will take longer than 90 days to issue the actual policy, and it also happens occasionally that insureds will suffer a loss after the binder has been issued but before they have actually received the policy. Such was the case in *Cooper, et al. v. St. Paul Surplus Insurance Company*, USDC Case No. CV05-785-MO. The policy was bound on xml:namespace prefix = st1 ns = "urn:schemas-microsoft-com:office:smarttags" /> June 7, 2001. The insured discovered dry rot in its commercial building on or about November 2001, and the policy was not received by the insureds until approximately December 5, 2001.

The claim was investigated and ultimately, a portion of the claim was paid and the remainder was denied. Approximately three years later, the insured filed suit in U.S. Federal District Court. The insurance company raised the two-year suit limitation provision in the policy as a defense in the case and ultimately filed for summary judgment on that basis. The insured contended that the company was not permitted to rely upon the suit limitation provision because (a) the policy was issued more than 90 days after the binder, and (b) the suit limitation provision was not explicitly identified in the binder.

On cross-Motions for Summary Judgment, the court concluded that the two-year suit limitation provision in the policy was enforceable because the Oregon statute governing enforceability of binders does not require that each limitation and exclusion be expressly quoted in the binder in order for it to be enforceable. Instead, the legislative scheme envisions that the binder will simply identify, with reasonable specificity, the coverage forms which will be used to make up the policy once it is processed and sent to the insured. In this case, the binder listed 22 coverage forms that would be used to make up the commercial policy, including a form titled "General Rules," which ultimately was indeed included in the policy sent to the insureds. The two-year suit limitation provision was included in the "General Rules" form. Accordingly, the court concluded that the two-year suit limitation provision was enforceable. The court did not make a determination whether the two years would begin to run from the date of the damage or from the date of the claim denial because under either scenario, this particular claim was time barred.

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