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Emerging Risk: Traumatic Brain Injury Claims in Low Exposure Carbon Monoxide Cases

I. The Emerging Trend

Traditional High-Dose Carbon Monoxide Exposure Claims

Exposure to high levels of carbon monoxide is toxic. Public health experts estimate between 500 to 2000 people die each year in the United States from carbon monoxide poisoning. A typical exposure scenario involves exposure to carbon monoxide in an enclosed space or inhalation of carbon monoxide due to a defective piece of gas-powered equipment, resulting in loss of consciousness or death. For example, in *Labranche v. Arle Compressor Systems Corp., et al.*, Case No. 05-20815 in the Circuit Court of Florida for Miami-Dade County, the plaintiffs' decedent was a sandblaster who, while engaged in sandblasting at a worksite, breathed through an apparatus that was attached to a compressor which was designed to supply air through underground lines. He unknowingly inhaled carbon monoxide and died at the scene from asphyxiation. The case settled prior to trial for \$1,000,000. *See* 2007 WL 5122947 (2007), 18 Fla. J.V.R.A. 5:C4, 20007 WL 7951398 (2007). Similarly, in *Singleton v. Eagle Solutions Acquisition Corp.*, the plaintiff's decedent was operating a commercial propane-powered floor buffer in a break room of a warehouse facility. He fell unconscious and was discovered three hours later, semi-comatose, with the buffer still running three feet from his body. The case resulted in a \$3,750,000 settlement. *See* 11 FJVR 8-4, 2011 WL 3556151 (M.D. Fla., 2011).

Claims professionals presented with a claim of wrongful death or very serious physical injury arising from carbon monoxide exposure will obviously give such a claim careful attention, assign competent counsel and set the proper reserves.

Traditional Low-Dose Carbon Monoxide Exposure Claims

Not all carbon monoxide exposure claims involve massive acute exposure and death or serious physical harm. Many, if not the majority, of carbon monoxide claims arise from low level exposures that do not result in loss of consciousness and which involve little to no medical treatment. Claims are filed months following the exposure event, usually in clusters, and often involve vague and nonobjective findings such as headache, nausea, dizziness and fatigue. Medical bills may be less than \$500 and wage loss nonexistent. The conventional wisdom often warrants setting low reserves, forgoing the expense of top legal talent and counting on resolution of the matters for nuisance value at some point down the road.

The Emerging Trend: Low Dose, But High-Dollar Damages

Imagine the shock when a claims professional managing a low dose carbon monoxide exposure claim receives a demand packages seeking seven figure settlements for what plaintiffs' counsel now describes as objectively provable brain damage, with commensurate neuro-cognitive impairment, neurological deficits, and even cardiac injury. Worse yet, it is soon discovered that these demands are supported by neuro-psychological testing and state of the art brain scanning such as Functional Magnetic Resonance Imaging (fMRI) or Diffusion Tensor Imaging (DTI), claiming to definitively prove basal ganglia abnormalities, hippocampal atrophy, temporal lobe lesions, white matter ischemic changes and decreased corpus callosum fiber tracts. Suddenly, the plaintiffs' low exposure cases are no longer low exposure cases for the insured and insurer.

Unfortunately, this scenario is playing out much more often around the country. For example, in *Spinelli v. Pompano Lincoln-Mercury, Inc.*, Case No. 50-2007 CA 002766 in the Circuit Court of Florida for Palm Beach County, the plaintiff alleged that she was exposed to dangerous levels of carbon monoxide after having the muffler in a new vehicle repaired at a car dealership. Two months after the repairs were made, she claimed that she nearly passed out while driving home one evening. Shortly thereafter, a pinhole leak was found in the muffler. She went to the emergency room complaining of nausea and headaches. Her carbon monoxide level, measured via a pulse-oximeter, was 2 to 3 percent. She was given oxygen and released. The next day, her blood gasses were interpreted as normal. A few days later, she saw a neuropsychiatrist. She subsequently filed a lawsuit seeking \$22,000,000 in damages, seeking to recover for cognitive dysfunction and other problems attributed to carbon monoxide exposure. She claimed short and long term memory problems, chronic headaches, severe and debilitating migraines, cognitive deficits, personality change, speech problems, anxiety and depression. At trial, the plaintiff testified that she was unable to resume her employment or her normal activities of daily living, and her mother and sister offered corroborating testimony. Doctors testified that 3.9 Tesla MRI films and neuropsychological testing demonstrated that she had "decreased fiber-tracking" in the brain, evidence of her brain injury. The jury found no negligence and returned a defense verdict. *See* 2008 WL 2736697 and 18 Fla. J.V.R.A. 10:C3, 2008 WL 9354639 (2008).

Even more troubling is that, armed with new literature and new imaging technology, plaintiffs' lawyers are convincing juries that verdicts in excess of 20 and 30 million dollars are reasonable. The goal of this seminar is to acquaint claims professionals with this emerging trend, explain how these low exposure cases are prosecuted, why they are extremely dangerous and most significantly, to provide strategies in defense and mitigation.

II. Carbon Monoxide 101: Sources, Dangers, and Detection

Understanding the Toxin

According to the United States Centers for Disease Control and Prevention:

Carbon monoxide (CO) is an odorless, colorless, poisonous gas that can cause sudden illness and death if present in sufficient concentration in the ambient air.

When power outages occur during emergencies such as hurricanes or winter storms, the use of alternative sources of fuel or electricity for heating, cooling, or cooking can cause CO to build up in a home, garage, or camper and poison the people and animals inside. Generators, grills, camp stoves, or other gasoline, propane, natural gas, or charcoal-burning devices should never be used inside a home, basement, garage, or camper - or even outside near an open window or window air conditioner.

How to Recognize CO Poisoning: The symptoms and signs of carbon monoxide poisoning are variable and nonspecific. The most common symptoms of CO poisoning are headache, dizziness, weakness, nausea, vomiting, chest pain, and altered mental status.

The clinical presentation of CO poisoning is the result of its underlying systemic toxicity. Its effects are caused not only by impaired oxygen delivery but also by disrupting oxygen utilization and respiration at the cellular level, particularly in high-oxygen demand organs (i.e., heart and brain).

Symptoms of severe CO poisoning include malaise, shortness of breath, headache, nausea, chest pain, irritability, ataxia, altered mental status, other neurologic symptoms, loss of consciousness, coma, and death; signs include tachycardia, tachypnea, hypotension, various neurologic findings including impaired memory, cognitive and sensory disturbances; metabolic acidosis, arrhythmias, myocardial ischemia or infarction, and noncardiogenic pulmonary edema, although any organ system might be involved.

See http://emergency.cdc.gov/disasters/co_guidance.asp.

Confirming and Characterizing the Exposure

Symptoms of carbon monoxide poisoning vary with concentration, duration, susceptibility and activity at the time of exposure. Acute symptomatology occurs quickly at high levels. Chronic exposures to low levels of carbon monoxide will manifest, if at all, as a constellation of mild, vague symptoms that persist but build over time. Ambient air levels of carbon monoxide are

measured in parts per million (parts per million). At 35 parts per million slight headache and dizziness can be expected in 6 to 8 hours. The same symptoms can occur in less than 3 hours when levels rise to 100 parts per million. At 200 parts per million headache and diminished judgment are observed in 2 to 3 hours. Frontal headache within 1 to 2 hours is common at 400 parts per million. When levels reach 800 parts per million, dizziness, nausea, vomiting and convulsions are seen in 45 minutes. As levels approach 1600 parts per million, all of the above listed symptoms are likely within 20 minutes, with tachycardia and death following should the exposure last 2 hours. At levels over 12,000 parts per million, unconsciousness is likely in just 3 breaths with death occurring in less than 3 minutes.

Although awareness of the ambient air levels of carbon monoxide is important, what ultimately determines the degree of illness and injury is a function of the carboxyhemoglobin in a person's bloodstream measured as a percentage ratio of carbon monoxide to carboxyhemoglobin molecules. Most emergency centers will diagnose carbon monoxide poisoning when carboxyhemoglobin levels reach 12 percent. Generally, no observable effects are seen at levels under 10 percent. Between 10 percent and 20 percent dilation of vessels begins. Hyperbaric oxygen treatment is typically initiated at 25 percent. Headache is noticed as levels approach 30 percent with nausea and vomiting commonplace by 50 percent. Above 50 percent, convulsions, asphyxiation and coma occur. Levels above 70 percent are fatal. The half-life of carboxyhemoglobin in the blood averages 4 hours. Administering pure oxygen can reduce this half-life to an hour. Hyperbaric oxygen treatment cuts the half-life to less than 25 minutes.

III. The Legal Perspective

Exposure is often regarded as preventable, setting the stage for claims and lawsuits.

In light of the potentially devastating consequences of breathing carbon monoxide, it is generally understood that any circumstance that introduces this gas to any place where people reside, congregate, or work is the result of miscalculation. Most incidents involve the unknowing juxtaposition of people to a known source or the flawed ventilation of a known source. Often large numbers of people are simultaneously affected requiring the intervention of first responders along with investigation by local authorities. Building and plumbing codes are implicated when carbon fuel burning equipment is improperly installed, maintained or inspected. Code violations in such instances quickly point liability in the direction of building owners, architects, system designers and installers, facility managers, building associations, landlords and even equipment manufacturers. 39 states and many cities have passed legislation mandating the installation of carbon monoxide detectors. The absence of a working carbon monoxide detector that would have warned those exposed in such a jurisdiction, is arguably negligence *per se*.

Liability Factors Overview

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juxtaposition of people to a known source or the flawed ventilation of a known source. Often large numbers of people are simultaneously affected requiring the intervention of first responders along with investigation by local authorities. Building and plumbing codes are implicated when carbon fuel burning equipment is improperly installed, maintained or inspected. *See, e.g., Maxum Indemnity Co. v. Florida Const. Services, Inc.*, 2104 WL 6467197 (M.D. Florida 2014) (underlying tort suit giving rise to coverage action involved allegations that general contractor was negligent in the design and installation of a common wall, in violation of Florida's Building Code). Code violations in such instances quickly point liability in the direction of building owners, architects, system designers and installers, facility managers, building associations, landlords and even equipment manufacturers. *See also Sierra v. Allied Stores Corp.*, 538 So.2d 943 (1989) (exhaust pipe was originally vented outside, in accordance with code requirements, but it was improperly vented during subsequent construction, resulting in the release of carbon monoxide into restaurant common areas through air conditioning system). OSHA recently lowered its permissible exposure limit (PEL) from 50 to 35 ppm over the course of an 8 hour workday, with a peak level of 200 ppm at any given point. Beyond that, 39 states and many cities have passed legislation mandating the installation of carbon monoxide detectors. The absence of a working carbon monoxide detector that would have warned those exposed in such a jurisdiction, is arguably negligence *per se*.

The typical carbon monoxide personal injury suit involves claims of negligence under premises liability or products liability theories. *See, e.g., Rodriguez v. Houston Corp.*, 167 So.2d 746 (1964) (wrongful death action against landlord and gas company by tenant and his children for death of tenant's wife from carbon monoxide related to leak from gas-operated refrigerator, generally alleging improper installation and maintenance); *see also Sanchez-Knutson v. Ford Motor Co.*, 2104 WL 5139306 (S.D. Florida 2014) (consumer sued automobile manufacturer for products liability claims include defective design and breach of warranty, alleging that a defective exhaust system and/or HVAC system in Ford Explorer exposed occupants to dangerous levels of carbon monoxide); *Hook v. Brown*, 498 So.2d 1045 (1986) (suit against landlord alleging defective roof repair resulting in carbon monoxide exposure). Where appropriate, strict liability and breach of warranty claims also may be asserted. Architects, general contractors, and engineers involved in the original design and construction of a building where an exposure occurs may also be targeted. *See, e.g., Howard, Needles, Tammen & Bergendoff v. Calvin*, 473 So.2d 1365 (1985) (personal injury action against a firm of architects and engineers involved in the design and construction of a building, where the plaintiff alleged that a defective air-conditioning system allowed accumulation of carbon monoxide fumes). A common carbon monoxide exposure suit will read as follows: "[Plaintiffs] were exposed to carbon monoxide fumes after a vent pipe broke in their living quarters.... The vent pipe was located inside a heating unit designed and manufactured by Lennox and installed by Anderson's. [Plaintiffs] sued Lennox, asserting claims under both strict products liability and negligence theories. They also sued Anderson's for negligence related to installation". *Hulstine v. Lennox Industries, Inc.*, 357 Mont. 228 (2010).

Coverage Update: Recent Decisions of Note

Coverage for carbon monoxide claims depends on the specific language of the policy in question. Generally speaking, a pollution exclusion may apply to bar coverage. There are three analytical approaches to determining whether carbon monoxide is considered a “pollutant” and thus excluded from coverage due to a pollution exclusion. In “plain meaning” jurisdictions, the pollution exclusion is regarded as clear and unambiguous, and the plain meaning of the terms “pollutant”, “irritant” and “contaminant” clearly encompasses carbon monoxide. In “traditional environmental pollution” jurisdictions, the pollution exclusion is regarded as seemingly clear on its face but ambiguous when applied to the circumstances of the particular claim, and when there is an ambiguity, it must be construed against the insurer and in favor of coverage. This represents the majority view. In a small minority of jurisdictions that follow the “reasonable expectations” doctrine, the pollution exclusion is generally found to not apply to carbon monoxide because the insured reasonably expects to be covered for the typical carbon monoxide releases.

Florida generally follows the “plain meaning” approach, declining to limit the pollution exclusion to traditional environmental pollutants. See *Deni Associates, Inc. v. State Farm Fire & Cas. Ins. Co.*, 711 So.2d 1135 (Fla.1998). The “plain meaning” approach is also applied to exceptions to exclusion. In *Admiral Ins. Co. v. Feit Management Co.*, 321 F.3d 1326 (11th Cir. 2003), several residents of an apartment complex were seriously injured or killed when carbon monoxide fumes from an improperly vented water heater in an seeped into an attic and through a heating, ventilating and air conditioning system and into individual apartments. The insurers filed a declaratory judgment action seeking a determination as to the applicability of the absolute pollution clause and an exception to the exclusion which restored coverage for “injury or damage sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building.” *Admiral Ins. Co. v. Feit Management Co.*, 321 F.3d 1326, at 1328. The district court found in favor of coverage. The appellate court reversed, finding that court found that carbon monoxide was a “pollutant,” but also that exception did not apply because the carbon monoxide was emitted from the hot water heater, which the court did not regard as “equipment used to heat the building.” *Id.* at 1327-30.

Recent opinions of note in other jurisdictions include *Scottsdale Ins. Co. v. Village of Crestwood*, 784 F. Supp. 2d 988 (7th Cir. 2012)(applying Illinois law, and relying, in part, on *American States Ins. Co. v. Koloms*, 177 Ill. 2d 473, 687 N.E.2d 72 (1997), which barred coverage for CO exposure, court determined that pollution exclusion only applies to "traditional environmental pollution."); *State Auto. Mut. Ins. Co. v. Flexdar*, 964 N.E.2d 845 (2012)(Pollution exclusion does not bar coverage unless it unambiguously identifies the chemical in question. Indiana decisions have been consistent in recognizing the requirement that language of a pollution exclusion be explicit.); *Midwest Family Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628 (2013)(Under a "plain-meaning" reading of absolute pollution exclusion, carbon monoxide is a "pollutant" and the exclusion applies to the indoor release of carbon monoxide due to a negligently installed boiler.; *Am. Nat. Prop. & Cas. Co. v. Wyatt*, 400 S.W.3d 417 (Mo. App. 2013)(carbon monoxide is not a "pollutant" for purposes of the total pollution exclusion, because a reasonable insured would not believe that carbon monoxide is a pollutant when it is present in typical residential-use settings. The court believed that a reasonable insured would understand the pollution exclusion to apply only to injury caused by an irritant or contaminant in an industrial or environmental

setting. (Residential exposure from a vehicle left running in a garage.); *Church Mut. Ins. Co. v. Clay Center Christian Church*, 2013 U.S. Dist. LEXIS 25131, 2013 WL 683519 (D. Neb. 2013), aff'd by 2014 U.S. App. LEXIS 5450 (8th Cir. 2014) (in a case arising from carbon monoxide exposure from a malfunctioning home heating system, carbon monoxide was properly considered a "pollutant" for purposes of the absolute pollution exclusion); and *Century Sur. Co. v. Casino W., Inc.*, 329 P.3d 614 (Supreme Court of Nevada 2014) (absolute pollution exclusion did not exclude coverage of claims arising from carbon monoxide exposure, the indoor air quality exclusion did not apply to exclude coverage of claims arising from carbon monoxide exposure).

III. Understanding the Low Dose, High-Value Carbon Monoxide Claim

Recognizing a Low Dose, High Value Carbon Monoxide Exposure Claim

Exposure Perspectives

In *Macy v. Whirlpool Corp.*, 2014 BL 239169, S.D. Tex., No. 10-01861 (August 28, 2014), the U.S. District Court for the Southern District of Texas observed that “[e]xposure to high levels of carbon monoxide is toxic. Nobody, however, can avoid it entirely. A small amount — 0.2 parts per million — naturally occurs in the air. Four representative organizations have published standards about how much exposure to carbon monoxide is safe:”

Occupational Safety and Health Administration	50.0 parts per million
CenterPoint Energy, Inc.	35.0 parts per million
National Institute of Occupational Safety	50.0 parts per million
American Conference of Governmental and Industrial Hygienists	25.0 parts per million

Recent Verdicts and Settlements in Low-Level Carbon Monoxide Exposure Cases

Concern for the jeopardy imposed by low carbon monoxide exposure is more than a function of the plaintiffs’ bar pushing the envelope on what is fair compensation; it is a function of juries validating them and more. In 2010 in Baltimore, a group of 23 workers exposed for a short time to moderate levels of carbon monoxide at a restaurant adjacent to a boiler room with a leak and no carbon monoxide detectors were awarded over \$34 million. No plaintiff died, none even lost consciousness, most did not go to the hospital and those who did were treated and released within hours. The highest documented carboxyhemoglobin was 27 percent and no others exceeded 15.7 percent. To put these numbers in perspective the average carboxyhemoglobin for a 2 pack per day smoker is over 10 percent. The average carboxyhemoglobin for a person stuck in a traffic jam on a summer day is very close to 15 percent.

In Wyoming in 2013 a single 20 year old student in physical therapy school was awarded 28.5 million dollars following a furnace leak in her apartment. As a result of this chronic exposure, this plaintiff alleged headaches, cognitive and memory deficits, sleep disorders and an inability to complete her degree. See Order of Judgment issued in *Amber Nicole Lompe v. Sunridge Partners, LLC and Apartment Management Consultants, LLC*, U.S. District Court for the District of Wyoming Case No. 2:12-cv-00088 (Document No. 151).

In 2011 in Boston, a 28 year old mother and her 4 year old daughter were exposed in their apartment due to a leak from the HVAC unit. Upon arrival at the hospital the mother's carboxyhemoglobin level was 17 percent dropping to .2 percent following treatment. Her daughter's level was 15.7 percent, which dropped to .2 percent. The child had no reported complaints. The mother complained of headache, fatigue, post-traumatic stress disorder and difficulty in caring for her daughter as well as she did before the exposure. For context, pulmonary function testing diffusion studies require a patient to inhale a mixture of gases including .3 percent carbon monoxide. The building owner, facility manager and heating/ventilation/air-conditioning installer facing enormous demands settled for over \$3 million.

IV. The Medical Perspective on Low Dose Carbon Monoxide Exposure

The Traditional View of Carbon Monoxide Exposure and Its Effects

According to the United States Centers for Disease Control and Prevention, the diagnosis of carbon monoxide poisoning is “based on a suggestive history and physical findings coupled with confirmatory testing...The key to confirming the diagnosis is measuring the patient's carboxyhemoglobin (COHb) level...an elevated COHb level of 2% for non-smokers and >9% COHb level for smokers strongly supports a diagnosis of CO poisoning.” However, “COHb levels do not correlate well with severity of illness, outcomes or response to therapy so it is important to assess clinical symptoms and history of exposure when determining type and intensity of treatment”. See http://emergency.cdc.gov/disasters/co_guidance.asp.

Understanding the Science, Medicine, and Technologies Supporting the Low Dose, High Value Claim

In the past, in brain injury cases involving injury from hypoxia due to carbon monoxide or trauma such as concussion, litigants have been limited to proving cognitive deficits with neuropsychological testing, which is subjective and highly variable. Now, there are new tools and technologies available to assess the areas of the brain potentially impacted by an injury. Images and data used from these new tools and technologies are being used to purportedly document objective signs of cognitive injury and to explain functional impairment due to an alleged brain injury. The new tools and technologies include functional magnetic resonance imaging, positron electroencephalography, diffusion tensor imaging, and quantitative electroencephalography.

VI. Strategies for Managing Low Dose High Value Carbon Monoxide Claims

Recognize the Claim Profile Early and Mobilize Your Team

The plaintiffs' bar is now challenging the longstanding belief that absent exposure sufficient to cause loss of consciousness or similarly severe symptoms, there are no long term effects from exposure to low levels of carbon monoxide. Seizing on more recent literature that suggests neurological sequelae may manifest as late as 40 days post exposure in 50 percent of those exposed to low levels, plaintiffs lawyers eschew traditional defenses based on minor exposures,

delays in reporting or minimal medical treatment. They are enlisting experts to objectively support what was previously relegated to the realm of neuro-psychological testing. Aided by advances in medical imaging such as quantitative and functional MRIs (qMRI, fMRI), Diffusion Tensor Imaging (DTI), Positron Electroencephalography (PET), or Single Photon Emission Computed Tomography (SPECT), medical imaging experts claim that they can illustrate the patterns of brain injury caused by the pathophysiologic mechanisms of carbon monoxide poisoning. They now produce films in vivid color purporting to show the exact locations of the brain lesions correlating to the neuropsychological findings and the subjective complaints of the plaintiff. They now testify before jurors with scans claiming to depict atrophy of the hippocampus, decreased fiber density in the corpus callosum, necrosis of the globus pallidus, injury to the basal ganglia and demyelination of cerebral white matter. The impact of this evidence can be devastating as jurors are told that they are looking at color images, i.e. “proof positive” of the actual permanent damage inflicted upon the plaintiff’s brain caused by carbon monoxide exposure. Suddenly, the plaintiff’s vague subjective complaints and the psychologist’s confusing terminology become very real, completely objective and very understandable for jurors who are looking for the simplest choice to make on a very complicated medical question. It follows then, that jurors do not find it a “leap of faith” to believe that auditory, vision, and cardiac problems are likewise related. Huge verdicts then ensue.

Build a Foundation for an Effective Defense of Causation and Damages

It is imperative that an effective defense to this onslaught begins early. Since it is unlikely that any plaintiff will have scans taken prior to the alleged exposure, complete medical, social, educational and employment histories must be developed on each plaintiff so as to construct a pre-exposure baseline. The plaintiffs experts seek to compare the plaintiff’s brain to an otherwise perfect brain. Credible specialists in the field will explain that for the average adult no such brain exists. It is unlikely that any active individual reaches adulthood without exposure to many and various prior insults to brain health and function. Birth trauma, infection, anemia, apnea, prior loss of consciousness or concussion are all potential causes of what the plaintiff’s imaging may show. What are the plaintiff’s social habits? Is there a history of smoking, drug or alcohol abuse? Was the plaintiff an athlete involved in a contact sport, with repetitive impacts as in football, soccer or martial arts? What is the plaintiff’s occupation? Has there been regular exposure to solvents, chemicals, fumes, vapors or loud noise. Is there a family history for degenerative illnesses such as Multiple Sclerosis, Alzheimer’s, Parkinson’s, depression, anxiety, Attention Deficit Disorder, Attention Deficit/Hyperactivity Disorder, or bipolar disorder? School records often contain years of baseline testing and cognitive evaluation that may reveal long existing problems similar to those now blamed on carbon monoxide. Thorough searches of social media sites may reveal activities and behaviors that establish other potential causes of abnormal imaging or provide evidence that the plaintiff is not being candid as to the injuries alleged. Needless to say, this type of investigation cannot be done quickly.

Implementing the following checklist will expedite and focus the approach:

- Confirm the total number of potential claims.
- Consider all possible policy exclusions.

- Obtain all public health and safety investigative reports.
- Confirm jurisdictional statutes for carbon monoxide detectors.
- Identify other potential parties for contribution or indemnification.
- Obtain each plaintiff's, medical records, complete medical history, educational records, past and present employment histories and social media involvement.
- Consult legal counsel with experience in carbon monoxide exposure cases in order to properly assess the case, plaintiff's counsel, plaintiff's experts and to engage the best available defense expert witness.

The admissibility of expert opinion testimony should always be evaluated. *See, e.g., Covas v. Coleman Co., Inc.*, 2005 WL 6166740 (S.D. Florida, 2008) (denying in part and granting in part a defense motion to strike or exclude opinions of the plaintiff's engineering expert on *Daubert* grounds).

Identify and Understand Risk Transfer Opportunities

VII. Applying the "Lessons Learned" to Mitigate Risk