

LEGAL TRENDS: North Carolina Insurance & Injury Law

August 2009

Dear Insurance Professional:

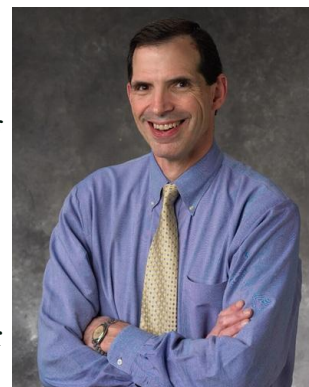
Every so often in my law practice, I come across court opinions, magazine articles, journal reports and other bits of information that I think folks in the insurance industry might like to know. This e-newsletter is a chance for me to communicate some of these insights in the hope that you and your clients might benefit.

Feel free to contact me anytime with feedback -- good or bad -- about the news reported here. If you have any questions about the issues raised, or any other legal concerns, I will do my best to address them...or at least point you in the right direction!

All the best,



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No More "Selection/Rejection": Is Life Simpler Now?

Since the beginning of this year, consumers no longer have the option (some might say the stupidity) to "reject" Uninsured Motorist (UM) Coverage or Underinsured Motorist (UIM) Coverage. A revision to North Carolina's auto insurance statute ([NCGS 20-279.21](#)) makes clear that the amount of UM and UIM coverage shall be the same as a policyholder's liability coverage.

Regardless whether you were for or against this change, it DOES at least eliminate situations where an insurer potentially is forced to provide \$1 million UM or UIM coverage because an agent failed to get a customer's formal "rejection" of such coverage. For instance, just in the last year

the [NC Court of Appeals](#) had to wrestle over an expert's opinion that the signature on a selection/rejection form was not the insured's, and a [Federal Trial Court](#) rejected an agency's explanations that it "misplaced" an insured's selection rejection form.

There They Go Again...

NC Courts Clarify (Kind of?) Insurer Do's and Don'ts

With each term, it seems that State and Federal Courts in North Carolina offer up a smorgasbord of opinions meant to clarify insurance rules and regulations. But often, they seem to leave as many questions as answers.

Consider a recent case ([Davis v. State Farm](#)) where the Federal Magistrate considered whether an agent -- named individually as a defendant along with the insurance company -- had been added "fraudulently" to the lawsuit by the plaintiff. The Magistrate ultimately ruled no, but suggested that the agent may have been included for "fictitious" reasons.

Likewise, in two other cases ([Luther v. Seawell](#) and [Carter v. West American](#)), the North Carolina Court of Appeals ruled in favor of the insurance agents and their companies, stating that they had not violated fiduciary duties or committed unfair trade practices. However, the specific facts in both those cases determined the favorable results to the defendants. The question is whether slightly changed facts would have drastically changed the results?

Courts this past year have continued to struggle with interpreting concepts like "regular use" ([Farm Bureau v. Morgan](#)) in determining when to exclude coverage for non-policy vehicles, as well as the "physical contact rule" ([Moore v. Nationwide](#)) in limiting Uninsured or Underinsured Motorist (UM or UIM) Coverage involving hit-and-run drivers.

All these opinions illustrate that insurance cases often rely heavily on the specific facts of a particular claim, and that seeking individual legal counsel on special situations and issues is usually a good idea.

Our New Website:

All Kinds of Useful Info

(Especially On Drunk Driving and Ways to Prevent It!)

Earlier this year, our law firm launched a new and improved website (www.wdrlawfirm.com) that provides a lot of information on [different areas of the law](#), and more fully describes [our attorneys](#) and the [services](#) they provide.

Not only is there a section on [general negligence and injury litigation](#) (my particular area of emphasis), but I am particularly proud of the extension information and resources linked through our webpages on [Drunk Driving Accidents](#). Best of all, it is a free resource available 24/7!

Of course, it is not necessary to go through our website if there are any particular questions on special situations. A quick email to mdaisley@wdrlawfirm.com or a phone call to (704)375-1800 is all that's needed.

On the Horizon...

Will N.C. Legislators Bring Tort Law Into the 21st Century?

North Carolina remains one of only three states that still clings to the old common law defense of "contributory negligence." This means that any injured party -- no matter how devastating or catastrophic the injuries -- is absolutely barred from any recovery if a jury finds that such an injured person was in any way at fault and contributed to his or injury by even the slightest degree.

Legislation is currently being considered in both the [House](#) and [Senate](#) to move North Carolina to some form of "comparative negligence" system. Stay tuned...

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