

## Andrea Davis

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**From:** Stewart Clontz & David Larson [ncaj@ncaj.com]  
**Sent:** Tuesday, August 31, 2010 8:06 AM  
**To:** Andrea Davis  
**Subject:** ATS Happenings -- Check It Out!



## AUTO TORTS

### Section Newsletter

## August 2010

## From the Communications Co-Chairs

In addition to our awesome *Interrogatories* feature, the August issue of the Section e-newsletter provides information on a new Section benefit as well as all the NCAJ happenings that may interest Auto Torts Section members.

If any Section member would like to be an *Interrogatories* participant or contribute an article of interest in upcoming issues of the e-newsletter, please contact us directly at [SCLontz@Farrin.com](mailto:SCLontz@Farrin.com) or [DLarson@lawmed.com](mailto:DLarson@lawmed.com) and include SECTION NEWSLETTER in the header of the email.

**ENJOY!**

**Stewart Clontz & David Larson**  
**Communications Co-Chairs, Auto Torts Section**

## Interrogatories



Each month an Auto Torts Section member responds to a few questions regarding their practice and experience, growth and changes in the auto torts practice area. This month, the *Interrogatories* spotlight is focused on **Craig Asbill**. On behalf of all Section members, we thank **Craig** for his terrific contribution to this newsletter! *Enjoy!* -- **Stewart & David**

### 1) What was your first personal injury trial and how did it go?

My first personal injury trial was a denied soft tissue auto case wherein the defendant had alleged contributory negligence as a defense. The case involved a relatively small fender bender with minor, yet visible property damage. I was two months into the practice of law, after being licensed and sworn in as an attorney in early September of that year. I had never second chaired a trial or even seen a civil jury trial other than on television. In retrospect, my entire voir dire was probably objectionable. I knew that this particular liability insurance carrier and the attorneys traditionally representing them were known for their aggressive and underhanded litigation antics, but I probably shouldn't have accused them of such antics in jury selection, before the trial ever started. Luckily, the judge knew that I was being thrown to the wolves in my first trial and exhibited great patience while constantly sustaining objections to my voir dire questions. In the end, the jury found that the Defendant was negligent; that my client did not contribute to the cause of her injuries; and awarded nominal damages in the amount of One Dollar (\$1.00).

As is the still often the case for many of us who will try a typical MIST type case when necessary, I left the

courthouse feeling pretty beaten and bloodied, until I returned to the office and my employer at that time tried to encourage me (probably out of pity, or possibly out of guilt for having shucked this trial off on me before my law license had even come back from the frame shop) by declaring my efforts a victory and insisting that I file a Motion for Attorney Fees. After all, my \$1.00 verdict did exceed the Defendants offer of \$0.00. Unable to decide whether I should be happy or embarrassed, I filed my Motion for Attorney Fees as instructed. As expected, the judge advised me that he did not believe my results to be the situation contemplated by N.C. Gen. Stat. § 6-21.1, but gave me the compliments and assurances I needed to move forward from my first trial and actually approach my second trial (less than two months away) with some confidence and excitement. I recall that judge telling me that I was being thrown straight into the fire, just as he and many other good trial lawyers had been, and that although I could expect to walk out of those first trials with my nose bloodied, that the experience was invaluable and would be irreplaceable in my development as a trial lawyer.

Ten years later, I realize that judge couldn't have been more sincere and true in his comments, as those first couple of years of constantly being on the trial docket with MIST type cases was invaluable in instilling a comfort in me for the courtroom. Skill and success are things that have developed and are still developing with time and experience, but seem much more attainable with the early exposure I had to the courtroom.

## **2) What was your most memorable personal injury trial and why?**

My most memorable personal injury trial involved a Hispanic gentleman who was struck head-on while driving his work van by another vehicle that had lost control on an ice covered road and crossed over into my client's lane. From the start, the insurance carrier tried to take advantage of this client due to his position as an immigrant laborer who spoke broken English and knew very little about the insurance claims system. The client's real story was that he had come to the United States illegally ten years earlier, did not speak English, worked as a landscaper, and was convicted of DWI within the first year he was within the United States. Recognizing the error of his initial ways and realizing that his true goal for coming to the United States was to raise his two sons in a place where they could receive a quality education and have opportunities that their father did not have, my client had decided to amend his initial errors and actions. Within his first few years in the United States, my client took it upon himself to file the appropriate immigration documents, eventually legally obtaining Permanent Resident status; he served his driver license suspension, performed community service, and paid his fines for the DWI; he taught himself English; and he worked for a handful of landscaping companies until he learned the business and was able to start his own landscaping company, incorporate his company, and comply with his tax obligations. My client even chose to stop drinking entirely after he learned the affect a DWI conviction would have on his fleet insurance policy for his business and determining that it was not worth jeopardizing the successful landscaping business he was building to support his family.

As a result of the accident, my client sustained a cervical sprain/strain injury and labral tear to the shoulder. My client purchased his own health insurance, but was told by the auto liability carrier that they were only responsible for paying his insurance co-pays or any amount not covered by his health insurance as part of his bodily injury claim. Feeling that the carrier was not treating him fairly, my client first came to me for help. As a result of his inability to work at his pre-injury capacity, my client had to make drastic cuts to his business, including his personal health insurance that he could no longer afford. My client was unable to receive the medical care he needed, including surgery to repair the labral tear in his shoulder and based on the carrier's evaluation of the case as a soft tissue injury case, we were forced to file suit. In the meantime, due to my client's inability to work the 12 to 14 hours per day he had worked prior to his injury or properly supervise his company as he had once done, he had drastically cut his fleet of vehicles down to only a couple of trucks and eventually only 3 employees (he and his two sons, who were putting their college education on hold in order to help their dad save his business).

Realizing that my client met every negative stereotype associated with immigrant labor (illegally coming to the United States, arrested for DWI, and broken English skills) the carrier only offered \$9,000.00 to settle my client's claim consisting of \$6,000.00 in past medical expenses and approximately \$20,000.00 in anticipated expenses for future shoulder surgery. The Defendant was a well educated executive with IBM, and at trial the Defendant argued that he was not negligent, as he was driving carefully and within the speed limit and acting as any reasonable person would in such winter driving conditions, but had unfortunately, through no fault of his own still lost control of his vehicle on the icy road and struck my client. Although not the largest case I've tried, in this particular case, I realized that my client had a much deeper story to be told; one of redemption; one of true pursuit of the American dream; and one of a father trying to make a better life for his children. In listening to the conversation of the jurors in voir dire, it was clear that there were strong feelings about current issues of immigration and access to the courts and basic rights within this country and that the defense had likely been considering all of these aspects from the very onset of the case, as reflected in their settlement offer. I also knew that it was my job to tell this man's story in

an effective way to this jury, not only because he was in the right, but because without that shoulder surgery, nothing was going to save his business or put his sons back on their initial education track, rather than giving it all up to work to support their dad. When the jury returned a verdict finding the Defendant negligent and awarding damages of \$75,000.00 for my client, I knew that I had done what I was supposed to do as a trial lawyer, having told my client's story in a way that he could not, that allowed him get his shoulder repaired, save his business, and continue the pursuit for his family that he had worked so hard for.

### **3) What did you learn most from mentoring lawyers when you started?**

As with most lawyers who begin their careers as a plaintiff's trial lawyer, the opportunity to have mentoring lawyers is hard to come by. Simply due to the fact that most plaintiff trial firms are small in number (often only 2-5 lawyers), those starting their careers as plaintiff trial lawyers simply don't have the opportunities for mentoring, oversight, or even resources that lawyers receive with the big defense firms. I have been fortunate over the past 8 of my 10 years of practice to work for a trial lawyer (**Charles Monnett**) who is passionate about representing his clients and passionate about truly being a trial lawyer and the ideals that encompasses, and has always been willing to share his insight when needed, but when there are only 2 or 3 lawyers and a few hundred clients its inevitable that your often on your own. This is where I believe NCAJ is so important for new trial lawyers. We don't have the luxury of 100+ law partners to hold your hand until you're ready to try your own case. Through NCAJ, I feel that the most experienced trial lawyers in the state have all been my mentors. Although I believe that there is a certain "it" factor that successful trial lawyers must possess for connecting with a jury, I've learned almost "everything" that I know about successfully trying cases from the CLEs, listserv participation, and camaraderie with fellow NCAJ members.

### **4) What would you share with a new lawyer now?**

Get in the courtroom and try cases as early and often as you can. The profession is so geared toward settlement and mediation these days, that I fear that the art of trial practice and the true trial lawyers may be a dying breed. Don't fear the courtroom or the prospect of losing. It may be cliché, but its true that most of what you learn as a trial lawyer comes from cases that you have lost because a true competitor is more likely to analyze every aspect of those cases to learn from their mistakes or figure out how to better approach that situation when faced with it again. While I recognize that alternative dispute resolution methods are very effective and have been a great addition to the civil court system, and recognize that every case does not need to be tried, and in fact many cases shouldn't be tried, I do fear that if the young generation of trial lawyers do not get into the courtroom and keep the art of the jury trial alive, future generations of claimants will fail to receive the benefit of the civil jury trial if fear of, or unfamiliarity with the courtroom becomes a trait of the younger generation of lawyers.

### **5) How has the insurance defense bar changed?**

Others may disagree, but I believe that the defense bar has become more civil and professional since I began practicing 10 years ago. Unfortunately, I think this is a direct result of the decline in cases being filed or tried to a jury these days. I've noticed a significant decline in the amount of cases being filed and tried since I started practicing 10 years ago. There is no denying that jury calendars in our courts have shrunk considerably. However, as a result of declining case loads, it seems that some of the more rogue insurance defense firms that were around 10 years ago have disappeared and the more limited cases that are out there to be defended tend to be handled by the more reputable defense attorneys and firms that have survived. Although, I must say that with less cases being filed and pursued through litigation, it does seem that the insurance defense bar, in some cases, seem to be churning their files to some extent, resulting in more excessive discovery and unnecessary Motion filing.

### **6) Please comment on the current state of the auto injury practice in North Carolina?**

I believe that the current state of the auto injury practice has become much more labor intensive. There seems to be much less litigation, especially with smaller cases, as I've referenced, but the process of settling a case and actually disbursing and closing the file has become much more labor intensive with all forms of liens and reimbursement rights being much more aggressively pursued. It seems that it has become more difficult to disburse a settlement than it is to obtain a settlement these days. I think this is pretty obvious just by looking at the number of subspecialties of attorneys popping up within the field for the sole purpose of dealing with settlement disbursements in light of advancing rights and requirements relating to Medicare, Medicaid, ERISA liens, and other such reimbursement rights.

### **7) Who was the first personal injury client who touched you and why?**

The first personal injury client that really touched me was a 14 year old girl who lost her leg when struck by a vehicle while she was a passenger on a neighbor's ATV. I was about 2 or 3 years into practice when the girl's family called me to meet with them at their home. After an adjuster with their neighbor's homeowner's insurance carrier met with the family at their home and assured the family that they would take care of their daughter, the adjuster's tune began to change over the coming weeks as she started making comments about whether the girls should've been on an ATV, whether they were wearing helmets, whether they heeded the warnings listed on the ATV, and whether the occurrence would even be covered under the policy. Eventually, the adjuster notified the family that the claim was being denied and the family was devastated. Unknown to me, the family consulted a couple of attorneys in their home town and were advised that there would be no coverage in such a case and declined to take the case. I met with the family at their home and based on my research of case law, felt that there was an argument for coverage due to the ATV being used for the benefit of the homeowner's property. Eventually, after presenting the carrier with pertinent case law they conceded coverage and tendered their policy limits of \$300k. Along with the liability coverage of \$30k from the automobile that struck my client, I was able to secure a settlement of \$330k for this young girl. Although I obviously wished that there was more that I could've recovered for this girl, we were able to collect every dollar of available insurance coverage, allow the family to purchase an appropriate prosthetic and through investment in a structured settlement were able to obtain an annuity that will pay \$1.4M in future payments to my client, ultimately allowing her to pay for college as well. The family would eventually tell me that after being rejected by the other attorneys they consulted that they knew nothing else to do but pray and although they were surprised by how young I was when I came to meet with them, that they thought their prayers had been answered when I came to their house and agreed to take their case, and because of that decided to trust me even if I looked too young to be a lawyer. Not long after the case settled, I got a phone call from the client's father at my office telling me to rush home to catch the 6:00 News because my client had made the Varsity volleyball team at her high school with her prosthetic leg and was being featured as the prep sports star of the week. That was very satisfying.

**Craig O. Asbill** is an associate with *Charles G. Monnett III & Associates* in *Charlotte*. **Craig's** practice focuses on personal injury, workers' compensation, and medical negligence. A native of Asheboro, North Carolina, **Craig** received his B.A. from North Carolina State University in 1996, and his J.D. from Mercer University in 2000. **Craig** is licensed in North Carolina and South Carolina, and is admitted to practice before the United States District Court for the Western District of North Carolina. He is a member of the American Association of Justice, the North Carolina Advocates for Justice, the North Carolina State Bar, the South Carolina State Bar, the North Carolina Bar Association, and the Mecklenburg County Bar Association. Craig can be contacted at [casbill@carolinlaw.com](mailto:casbill@carolinlaw.com) or (704) 376-1911.

For more information on the NCAJ Mentor Program, email [AndreaD@ncaj.com](mailto:AndreaD@ncaj.com).

## Summary of Verdicts List – Call for Information!

After having watched the posts on the Section listserv for several years, individual verdict summaries have been detailed statewide, however, there has never been an attempt to capture these verdicts and put them together in a comprehensive and secure list for all members to review and reference.

**Good News! The wait is over!** The Auto Torts Section leadership's goal is to provide you with a Summary of Verdicts List.

The Summary of Verdicts List will be housed on the Auto Torts Section subportal, [autotorts.ncaj.com](http://autotorts.ncaj.com), on the members portion of the NCAJ website and will contain the following fields of information:

- Case Name
- Plaintiffs Attorney(s)
- Defense Attorney(s)
- Insurance Company
- Highest Offer Prior to Trial
- Date of Verdict
- County
- Brief Summary
- Plaintiffs Case (100 words or less)
- Defendants Case (100 words or less)

- Expert Issues (if any)
- Additional Comments and/or Special Information (if any)
- Name, Email Address of ATS Member Making Submission)

The list will be sortable by any of the fields listed above.

The information will be submitted directly to NCAJ using the Auto Torts Section Verdict Report Submission Form linked below. Section leadership hopes, with input from you, that the Summary of Verdicts List will be up and running in September. The list will be updated as data is received. After this initial request, calls for information will be made periodically through the Section e-newsletter, listserv and individual emails.

Submissions can be for verdicts of any size as well as for wins AND losses. And, occasionally, a verdict summary from a member will be highlighted in the newsletter.

[CLICK HERE TO ACCESS THE VERDICT REPORT SUBMISSION FORM](#)

The Summary of Verdicts List can only be successful with your cooperation. The Auto Torts Section leadership thanks you, in advance, for contributing information to the Summary of Verdicts List.

## Awesome CLE Planned For You

Check out these upcoming informative & fun events that your ATS CLE Committee has planned for you!

**ADVANCED INTERSTATE TRUCKING LITIGATION: Combat Training for the Courtroom - [REGISTER TODAY!](#)**

*I'm very excited about this trucking seminar. I believe that the joint CLE by NCAJ and the Association of Plaintiff Interstate Truck Lawyers of America (APITLA) will prove to be one of the best Trucking CLEs ever presented in North Carolina. Having attended a 3-day APITLA trucking seminar in St. Louis, I know that the quality of the speakers will be absolutely top notch, and that every attendee will come away from the seminar feeling energized and excited about applying what they have learned to their current and future commercial truck cases. If you currently have a truck case or think you might handle one in the future, you should not miss this CLE. It will be an exceptional seminar! **Brian Davis**, CLE Program Co-Chair*

September 10, 2010  
Sheraton Downtown  
Raleigh  
6.5 CLE Hours

NCAJ has partnered with the *Association of Plaintiff Interstate Trucking Lawyers of America* to present a seminar to provide tips, tools, and tactics from nationally acclaimed plaintiff interstate trucking litigators and experts. This is an exclusive one-day program with attendance limited to plaintiff's counsel only -- no defense lawyers!

Check out this incredible lineup of speakers and topics:

**Bernard Walsh, Bradenton, Florida** (*Litigating Trucking Cases: Proving Your Case*)  
**Steve Lowry, Savannah, Georgia** (*Crashworthiness in Trucking Cases*)  
**Guy Crabtree, Durham, North Carolina** (*The Team Approach to Handling Your Case*)  
**Allan (Chip) Sloan, III, Charleston, South Carolina** (How to Discover & Prove Medical Disqualification)  
**Jon Papin, Chicago, Illinois** (*Negligent or Willful & Wanton Hiring of the Unsafe Driver*)  
**John Bat, Plaintiff Settlement Solutions, Castle Rock, Colorado** (*Open Up New Possibilities*)  
**Tom Vesper, West Atlantic City, New Jersey** (*Bullet Proofing your Plaintiff for Deposition: John Whine can be John Wayne*)  
**Daniel Thomas, Independence, Missouri** (*Shell Busting: Pulling Back the Curtain on Trucking Operations & Holding Parent Companies Liable*)  
**Charles G. Monnett, III, Charlotte, North Carolina** (*Traumatic Brain Injuries in Trucking Cases*)  
**Brian Davis, Asheville, North Carolina** (*Investigating Commercial Truck Crashes*)  
**R. Kent Brown, Charlotte, North Carolina** (*Black Boxes: A Treasure Trove of Information*)  
**Dr. Richard Ziernicki, Knott Laboratories, Centennial, Colorado** (*Effective Use of EDR in Reconstructing*)

*Accidents)*

**Dan Ramsdell, APITLA National Director, Springfield, Missouri** (*Dan's Ten Commandments for Every Fatigued Trucker Case*)

[Click here](#) to register.

**OCTOBER 14-17, 2010**

**Mountain Magic - [Register Today!](#)**

*Grove Park Inn  
Asheville*

Enjoy the beauty of Fall in the western mountains of North Carolina while at the same time having access to great CLE and having fun networking with colleagues. These are just a few events that Auto Torts Section members may be interested in at Mountain Magic:

**Friday, October 15**

*General Session for Civil Practitioners: Navigating the Medical Expenses Morass*

Medicare Changes: Who's on First; Where is My Check; and Why Is It Made Out to CMS? **Julie L. Bell** and **Christopher R. Nichols**

Collateral Attack on the Collateral Source Rule: Keeping "Bill v. Paid" Out of North Carolina, **Burton Craige**

*Auto Torts Section Meeting  
Sunset Social Hour*

**Saturday, October 16**

*Auto Torts Hot Issues and Case Law Update  
Search Engine Marketing Strategies  
Storage and Use of Personally Identifying Materials  
Sunset Social  
Evening at the Ritz!*

[Click here](#) for a detailed brochure.

[Click here](#) to register.

**Interested in other CLE topics?**

[Click here](#) for the full schedule of upcoming live educational seminars and video replays.

## Upcoming Events – Save the Date!

### **PAC RECEPTIONS - SAVE THE DATE!**

As NCAJ prepares for the November elections, NCAJ cordially invites all members to regional PAC Receptions. The 2010 election is critical to NCAJ's mission of Protecting People's Rights. NCAJ PAC needs your help to support those candidates who will fight for justice and protect your clients' rights.

Plan to attend any or all three of these PAC Receptions!

*September 16, 2010, 5:30 to 7:30 PM  
NCAJ Headquarters  
Raleigh*

*September 23, 2010, 5:30 to 7:30 PM  
Bonterra Dining and Wine Room  
Charlotte*

*September 30, 2010, 5:30 to 7:30 PM  
The Law Offices of Comerford and Britt  
Winston-Salem*

If you are interested in sponsoring one of these events, contact [Todd@ncaj.com](mailto:Todd@ncaj.com) or 919.835.2816.

## Support the NCAJ Fall Food Drive

The NCAJ *Dare to Care: Feed Those in Need* Spring Food Drive held this past March, and sponsored by the New Lawyers Division, was a great public service for North Carolinians as over 1000 lbs. of food was donated to food banks across the state.

The New Lawyers Division leadership is currently preparing for the upcoming Fall Food Drive on November 1-12 and needs your assistance!

*Volunteer Your Law Firm to be a Food Drive Host Law Firm.* Your law firm would be the home for a food donation box where NCAJ members can stop by and drop off food donations. Your law firm will be prominently noted in any promotional materials about the NCAJ Food Drive.

*Volunteer to be a Regional Food Drive Coordinator.* The Regional Food Drive Coordinator will drop off donation boxes to local area host law firms and deliver food donations to local area food bank. Your name will be prominently noted in any promotional materials about the NCAJ Food Drive.

*Work with Your Local Law School, County Bar Association or Court House to Host a NCAJ Food Donation Box.* Make the public aware of NCAJ's great public outreach program by contacting local organizations to host a NCAJ Food Donation Box.

*Host a food donation get-together.* What better way to have fun, socialize & at the same time perform a great public service? Host a regional gathering of NCAJ members and ask members to bring food donations.

To volunteer or for more details, email [AndreaD@ncaj.com](mailto:AndreaD@ncaj.com).

## On-Point: Topics from the Section Listserv

If you do not participate in Section listserv, you are missing out on one of the most valuable (and free) benefits of being an Auto Torts Section member.

Below is a list of wide-ranging topics that have been recently discussed by Section members on the listserv. As you can see, these topics greatly benefited all members of the Section listserv.

- Farm policy – horse
- Service of RFAs by publication
- Conference call service
- The Home Depot as defendant
- CMS and settlements
- Motorcycle v. Dog, and later, verdict.
- ICE announces launch of Online Detainee Locator System
- US Government's Lien (Tricare and WomackMedical Center)
- State Farm settlement
- NC Health Choice
- UIM adjuster talking with liability adjuster
- Certified driving records
- Judgment Against One Spouse
- UIM Bad Faith Complaint
- Good ERISA claim opinion from Judge
- How is this Judge?
- Parent/child immunity question
- Adjuster refusing to consider settlement package
- Punitive Exclusion in Out of State Policy
- Getting out of Federal Court
- Apology and Mistake
- The National Chamber will say anything
- Forsyth Verdict
- 6 21.1 atty fees when other side appeals to the COA how do you claim these?
- Hospitals Refusing to File on Health Insurance

In addition to these topics there are often lawyer, expert, doctor, accident reconstruction, mediator, judge and other recommendations.

So don't delay - make the most of your Section membership, email [AndreaD@ncaj.com](mailto:AndreaD@ncaj.com) today to set-up your Section listserv account.

Already a member of the Section listserv? [Click here](#) for a handy listserv FAQ.

## 2010-11 Auto Torts Section Officers

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