

Andrea Davis

From: Stewart Clontz & David Larson [ncaj@ncaj.com]

Sent: Friday, December 10, 2010 11:04 AM

To: Andrea Davis

Subject: Auto Torts Section Happenings!



December 2010

From the Communications Co-Chairs

In addition to our awesome *Interrogatories* feature and other interesting happenings, the December issue of the Section e-newsletter includes a Mountain Magic wrap-up, information on NCAJ's Educational Achievement Program and a recent Wake County verdict summary!

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 or DLarson@lawmed.com and include SECTION NEWSLETTER in the header of the email.

Happy Holidays!

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

Interrogatories

Each month an Auto Torts Section member responds to a few questions regarding his/her practice and experience, growth and changes in the auto torts practice area. This month, the *Interrogatories* spotlight is focused on **Robert T. Speed**. On behalf of all Section members, we thank **Tom** 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 trial involved a woman who had a broken ankle in several places as a result of a car leaving the highway and hitting her in her yard while she was standing in her yard. It was a trial that started almost three years to the day after the injury. At the time of trial, she still was wearing a brace. That one did not go well, but I guess it could have been worse. The jury only awarded medical bills to my client (and not pain and suffering).

2) What was your most memorable personal injury case and why?

Probably the most memorable case was a death case. It was a case where there were two kids that were arguing. One kid ran out into the highway, was hit by a car and lived only seven or eight hours after being struck by the car. The jury found no liability. It was most memorable because of the length of the trial. I retained a medical examiner from Chapel Hill who determined the blood alcohol level of the kid who was killed to be 0.19. My client, the other kid, did not have any alcohol in his system.

3) What would you share with new lawyers now?

I would tell new lawyers to spend the time necessary to be prepared for court with whatever is involved with their case. Don't leave anything to chance. Work...it takes work. We see a lot of attorneys who are not prepared for court. Judges see it a lot, and they complain about it a lot, and it is very, very noticeable. I think too many new lawyers have the impression that once they graduate, that is the ticket and the rest comes easily. That's just not the case at all. I still work from about three o'clock in the morning until about seven o'clock at night. It's the only way to be prepared and stay in court during the day. There's no freedom in practicing law, that's for sure.

4) How has the insurance defense bar changed?

I did defense work as well as plaintiff's work when it wasn't quite as specialized as it is now. That was when Nationwide had a horrible reputation for not settling cases. Allstate at that time, in my opinion, settled everything that should have been settled. They never gave me bad cases that shouldn't have been tried. I would say the defense bar is much more difficult to deal with. Insurance companies keep up with statistics and depressed areas that don't award decent amounts of money. I would say they are a lot more difficult to deal with. It's very difficult to settle cases.

5) Please comment on the current state of the auto injury practice in North Carolina?

Well, I've seen it change a lot on the plaintiff's end, too, because you're getting a lot of attorneys that advertise and they're accepting a lot of cases from everywhere. It's not as localized. It's pretty wide open. Fortunately, I don't get exposed as much, even though I'm still doing a lot of personal injury because I started gravitating to more of a criminal trial practice. I deal with a lot of judges. I think your small town practice is still a lot more fun, and I hope it will continue to be - although I look forward to being able to retire one of these days.

6) Who was the first personal injury client who touched you and why?

It was the case that I mentioned earlier - the woman with the injury to her ankle. She was 62 years old at the time. Of course, that was one of the problems with damages - she was not working, so we were only looking at pain and suffering, and juries for some reason don't like to award much for that. My client was a good, upstanding person - she planted a garden, and she helped her husband with his garden. We thought the jury verdict in that case was very unfair. Even the adjustor thought the jury would award more than they did. When it was all over, my client said to me, "I'll live tomorrow just like I did today. We don't worry about it." You can't ask for a much better client than that.

Robert "Tom" Speed, *Attorney at Law*, of 825 West King Street, Boone, has been practicing law for over 25 years and can be contacted at rtspeed@bellsouth.net or (828) 264-1191.

Mountain Magic 2010 Wrap-Up!

Submitted by **Stewart Clontz**

Once again, many NCAJ members participated in NCAJ's annual conference, *Mountain Magic 2010*, that was held at the lovely *Grove Park Inn* in *Asheville* on *October 14-17, 2010*.

Those of you that have attended Mountain Magic know that this event always provides members with a great mix of fun, learning, and camaraderie. I've had the privilege (and thank my firm for allowing me) to attend Mountain Magic during the last few years and I always find it very educational.

Over the course of days, Mountain Magic kicks off on Thursday evening with a great networking social at Tressa's in downtown Asheville. Friday hosts a general session for civil practitioners, a general session for criminal practitioners, Fall Conference for Paralegals, individual Section & Division meetings, a luncheon presentation and ends with a Sunset Social. Saturday always brings current and timely workshops in the areas of auto torts, workers compensation, social security disability, criminal defense (and many others), individual Section & Division meetings and ends, once again, with a Sunset Social. The Board of Governors meeting held on Sunday morning wraps things up at Mountain Magic. This year's Saturday luncheon Speaker, Charlie Cook, presented the "The Political Report" which really offered a learned perspective with information and opinions that were very fresh, deliberate and thoughtful in comparison to most political pundits at election time!

Below please find a more detailed report about the general session for civil practitioners that had a line-up of excellent speakers who discussed Medicare issues, "Bill v. Paid" Issue as well as potential legislative and law-related issues.

Julie Bell and **Chris Nichols**, each Past Chairs of the Section, put together a very informative program entitled "*Medicare Changes: Who's on First; Where is my Check; and Why is it Made out to CMS?*" **Julie, Chris** and a national Medicare lien expert discussed setting up a claim, getting it moved quickly and efficiently (relative terms where Medicare is concerned!) and avoiding any pitfalls in the case.

NCAJ Past President, **Burton Craige**, attorneys Peter D. Traska of Mayfield Heights, OH and **Daniel S. Chamberlain** of Indianapolis, IN presented "*Collateral Attack on the Collateral Source Rule: Keeping "Bill v. Paid" Out of North Carolina.*" The presentation covered what has happened in other states where the "Bill v. Paid" agenda has been addressed with several relevant statutes and case law were cited including:

A. North Carolina

1. N.C.P.I. Civil 810.04 - Personal injury damages - medical expenses
2. N.C.G.S. 8-58.1
3. Cates v. Wilson, 321 N.C. 1, 361 S.E.2d 734 (1987)
4. HB 813 [comparative fault] - Proposed Senate Committee Substitute (5/11/10) - Rule 414
5. Walker v. Enochs (Franklin County, 2008 CVS 1431)
6. Moser v. NC Baptist Hospital (Forsyth County, 09 CVS 2641)

B. Other States

7. Virginia - Acuar v. Letourneau, 531 S.E.2d 316 (Va. 2000)
8. South Carolina - Covington v. George, 597 S.E.2d 142 (S.C. 2004)
9. Ohio - Robinson v. Bates, 857 N.E.2d 1195 (Ohio 2006)
10. Indiana - Stanley v. Walker, 906 N.E.2d 852 (Ind. 2009)

The presentation addressed ways to work to neutralize the threat of "Billed v. Paid" --- winning and losing tactics, how other states have dealt with the issue and suggestions for approaches here in North Carolina. Judicial elections, legislative initiatives (positive and defensive), careful use of the rules and law in a trial setting and thoughtful consideration of any appeal approach, can benefit our clients and help direct this issue in the most positive manner. Close coordination among attorneys and NCAJ regarding any appeal related to this subject is requested and encouraged.

Verdict Summary – Read It Here!

Submitted by by **Russell Johnson**

WAKE COUNTY VERDICT

Just finished a four-day, invisible injury, trial in Wake County.

Basic Facts:

Accident happened June 2006. Plaintiff was 25 year-old housewife, seat-belted front seat passenger in a minivan traveling about 45 mph when defendant pulled out from a side street and tried to make a left turn in front of them, causing a T-Bone type collision. Plaintiff's husband tried swerving to the right, so only the corner of the driver's side of the Plaintiff's vehicle made contact with the broad, driver's side of the Defendant's vehicle.

Defendant's car was totaled but Plaintiff's vehicle was driveable and airbag did not deploy.

Plaintiff went to ER with neckpain and tingling in her arm. All scans were normal.

Some follow up with family doctor, one Ortho visit and a couple months of PT. Meds at that point were about \$15K.

PT showed steady improvement and then self-discharged from PT.

One week after stopping PT, Plaintiff was driving, and her neck locked up. Pain in neck and down her arm. EMS came and took her to the hospital. Big diagnostic bills but again all scans normal.

Visit to family care doctor in May 2007, reported that Plaintiff was much improved and only had an occasional bad day, and was running 5 miles a day. (I heard that about 47 times during the trial.) Plaintiff complained of shooting pain in her ear and face which family doctor thought might be trigeminal neuralgia. It was recommended in 2006 that she see a neurologist but she waited until almost two years after the accident. She went to Dr. Tabet in Wake Forest in 2008 who diagnosed trigeminal neuropathic pain but his note only records that plaintiff had shooting pain in the ear, which is inconsistent with trigeminal neuralgia. People with trigeminal neuralgia have electric shock like pains across their face, usually along the cheek. Dr. Tabet ruled out radiculopathy with EMG.

Another gap in treatment until 2010 when Plaintiff again went to Ortho, tried some ESI's that did not work and then again quit treating. Ortho suspected cervical facet syndrome but there was absolutely zero objective evidence of injury.

Plaintiff also had a trip to the ER about 11 months before the accident where she picked up her child, felt a pop in her neck, had pain and tingling, although it was on the opposite side of her neck.

Plaintiff: Nice, presentable young woman. Homemaker with 4 kids. Husband is a cook.

Lay Witnesses: Plaintiff's parents and one friend testified, did a good job and confirmed that she had complained of the shock like pains in the face.

Experts:

Dr. Tabet testified that plaintiff had permanent trigeminal neuralgia and cervical myofacial injury from accident and gave a total rating of 9%.

Defense hired Dr. Marvin Rozear, a retired neurologist from Duke to testify that Plaintiff did not have a nerve injury and that he did not believe the accident was severe enough to cause anything more than a mild neck sprain that should have resolved within a few weeks.

Total Meds: \$24,000

Defense Counsel: John Honeycutt

Carrier: State Farm

OOJ: \$20,000

Verdict: \$36,881

Verdict + Interests and Costs: \$48,518

Russell Johnson is an attorney with *Howard, Stallings From & Hutson, P.A.* in Raleigh & New Bern and can be contacted at rjohnson@hsfh.com or (919) 821-7700.

Would you like to share your verdict with other Section members? The Auto Torts Section leadership's goal is to provide you with a Summary of Verdicts List which will be sortable and housed on the Auto Torts Section subportal, autotorts.ncaj.com. 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. Section leadership will have this List up and running as soon as it receives input from you.

[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 **Russ** for sharing his verdict with Section members and thanks you, in advance, for contributing information to the Summary of Verdicts List.

Announcing NCAJ's Educational Achievement Program...



The North Carolina Advocates for Justice is pleased to announce the establishment of the **Educational Achievement Program** (EAP). EAP is designed to recognize NCAJ members for their commitment to improving trial skills and understanding substantive law as a means to better serve their clients.

- Attorneys who complete 20 CLE hours through NCAJ in one year, or an average of 20 hours per year over a three-year period, earn the distinction of an "Advocate" of the Educational Achievement Program (retroactive to July 1, 2010).
- Legal Assistants earn this distinction by completing 10 CPE hours in one year, or an average of 10 hours per year over a 3-year period (retroactive to July 1, 2010).
- Those members who achieve this status will be recognized in the NCAJ membership directory, on the NCAJ website, at Convention, and in other NCAJ publications. In addition, an "Advocate" of EAP will receive a specially designed logo to use in the firm's marketing and communications materials (all as set forth by accompanying NCAJ guidelines).

For additional information about NCAJ's Educational Achievement Program, please visit www.ncaj.com or contact Kim Williams at 800.688.1413 or kim@ncaj.com.

Upcoming Events – Save the Dates!

ETHICS CLE IN THE NEW YEAR - SATISFY YOUR ETHICS REQUIREMENTS VIA THE WEB OR LIVE!

Informative Webinars

NCAJ's Webinars are a great timesaver -- attend the webinar anywhere that you have computer and phone access AND get CLE credit at the same time! It's that easy! And, the Webinars listed below are just in time to satisfy your yearly Ethics CLE requirements.

February 9, 2011

Changing Law Firms: How To Do It Ethically?

Presenter: Deanna Brocker

[Click here](#) for more webinar information/to register.

February 28, 2011 - Save the Date!

Technology & Ethics

Presenter: Susan Olive

Live CLE

February 18, 2011 - Save the Date!

2011 Ethics Hot Issues

Program Chair: Burton Craige

Our esteemed Past President, **Burton Craige**, and ethics guru is putting together a powerhouse half-day CLE for you that will not only satisfy your ethics requirements but also your substance abuse requirements. *Stay tuned to future issues of this newsletter and the Section listserv for more details!*

SECTION-SPONSORED CLE - SAVE THE DATE!

April 8, 2011 - *Auto Torts Skills Training, NCAJ, Raleigh*

May 13, 2011 - *Proving Economic Damages: Non-Traditional Wage Earners, Triad TBD*
June 17-22, 2011 - *Convention 2011, Wilmington*

INTERESTED IN OTHER CLE TOPICS?

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

Add Another Section at Half-Price – Check It Out!

New to a Practice Area? Want to "Try Out" a Section? New to NCAJ and Haven't Joined a Section Yet? If your answer is "YES", NOW is a good time to add another Section to your membership - at half price of \$47.50!!

Join a Section and be included in a vibrant, statewide community of other NCAJ members who practice in the same area of law and who will provide you with professional support, expertise and idea exchange.

Take advantage of Section-specific resources: listserv, CLE, statewide socials and meetings, electronic newsletters, document banks or online trial notebooks, and much more!

NCAJ supports its members by providing a wide range of Sections - more than most TLAs in the nation: Auto Torts, Civil Rights, Commercial Litigation (free through June 2011), Consumer Areas of Practice, Criminal Defense, Disability Advocacy, Eminent Domain, Employment Law, Family Law, Juvenile Defense, Nursing Home Litigation, Products Liability, Professional Negligence, Small Office Practice, Workers Compensation.

NOTE: This offering only applies when you ADD a Section(s) to your membership and CANNOT be applied to your current Section membership(s).

[Click here](#) to join a Section(s) online using your credit card.

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Questions? Contact AndreaD@ncaj.com or (919) 836-4215.

Acquaint Your Colleagues with All that NCAJ Has to Offer...At Half-Price!

Pass along the good news to colleagues who are non-NCAJ-members: *NCAJ membership is now half-price!*

As you are aware, NCAJ has so much to offer your colleagues: Sections & Divisions specific to your practice area; CLEs provided statewide - live, video replay, webcast; Educational Achievement Program; legislative initiatives that positively impact you and your clients; "Trial Briefs" bi-monthly print journal, "Brief Notes" weekly e-newsletter; "e-Clips" daily news updates and other NCAJ publications; Amicus brief writing/filing/assistance; print and online membership directory listing, and much, much more!

[Click here](#) to print a Half Price Membership Application to pass along or let your colleagues know that they can enroll online at www.ncaj.com. *Questions?* Contact Lisa White at LisaW@ncaj.com or (919) 835-2807.

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 that greatly benefited all members of the Section listserv.

- Sample Complaint for Lawsuit against UM Carrier directly
- Structured Settlements and Erie
- UIM-Pedestrian
- Written Discovery from AG in TCA matter
- Immigrant PI proceeds check cashing
- State farm Bad Faith Question
- New Release Agreement from Farm Bureau
- Interplay Between Med-Pay and UM Coverages
- Client wants to back out of settlement
- Letter to Defendant Driver
- Deposition Uncooperative Defense Attorney
- GAL
- New Jury Instruction on Aggravation of an Existing Condition
- Can Minor Plaintiff be a Member of Two Households
- Form Medicare Reporting
- Multi-State review slams Allstate for Management of Colossus
- Voir Dire Suing a Family Member
- Pre-Mediation Demand
- Citizen and Resident
- Statute on Health Care Expense Presumption
- Mediator for Products Case
- Cyber-Label
- Value of loss of vision
- Powerpoint during opening
- Arbitration discovery
- Discovery Depo during Trial depo
- Addendum to Release for medicare Recipient
- HIPAA Violation
- Billed v. Paid – A threat to every PI Case
- Surprising Suggestion from State Farm
- School Bus...Tort Claim
- Deposing Docs for UIM Arbitrations
- RDU Airport – Person hit by Flying Luggage on Escalator
- Twist on a Well Known Ethics Rule
- Neuropsychologist Needed in Western NC
- Releases, Waivers and Hold Harmless
- Per-existing DDD, Osetophytes
- Addressing Religious Bias with jurors
- Drunk equals At Fault
- Causation Question...Evidence Question
- Depuy Hip Recall

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

2010-11 Auto Torts Section Officers

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