

Andrea Davis

From: Stewart Clontz & David Larson [ncaj@ncaj.com]
Sent: Monday, July 26, 2010 3:02 PM
To: Andrea Davis
Subject: Auto Torts Sction Happenings -- Read It Here!!



July 2010

From the Communications Chair

In addition to our awesome *Interrogatories* feature, the July issue of the Section e-newsletter provides a wrap-up to Convention held in June in Wilmington and highlights all the events going on that Auto Torts Section members would be interested in.

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.

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 **Don Higley**, the 2010-11 Auto Torts Section Chair.

Enjoy! -- *Stewart & David*

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

My first solo personal injury trial went well, which the judge pointedly told me was the "worst thing that could have happened" to me. It was a pass and turn where I represented a plaintiff driving a farm utility truck making a left turn. The defense not only presented evidence that my client did not have his turn signal on, but also had evidence that my client did not have operational brake lights, as demonstrated by a "cold break" of the filament in the bulb when the wreck occurred. I was able to keep that evidence out because a local firm, hired by the woman who would become the defendant in the lawsuit, went and found the wrecked vehicle and took the bulb so that it could be presented to an expert. The Court found that it had the inherent power to exclude the evidence because it just didn't seem right to allow Defendant to benefit from a trespass. Defendant did, however, testify that she saw no brake lights and that his turn signal was not used. My client also had a problem in that he had multiple DWIs within the previous ten years which were admissible pursuant to North Carolina Rule of Evidence 609. Further, his hospital records showed that he had a small amount of alcohol in his system when he went to the hospital on the morning of the wreck (no doubt from a big night the night before), and that evidence was allowed in because he had a concussion with alleged confusion ("Can't alcoholism cause confusion, doctor? Are you aware he had alcohol in his system on the morning of the

wreck?"). Defendant hit him so hard that she knocked his heavy utility truck over on its roof. As such, I argued that the physical evidence showed that Defendant went around him in one motion going so fast that it "would not have mattered if the Ohio State marching band was in formation telling her that he was turning." The partner who had come over to court to watch my closing arguments suggested that I might want to try the ECU marching band next time. In any event, we got him a verdict and more money than he had ever seen which I am sure was gone within the year.

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

My most memorable trial was in Plymouth, North Carolina, early in my career. On the Monday of trial, after the jury was let go, I emerged from a back room discussion with one of the other lawyers to find my client surrounded by deputies with several warrants. Apparently, the bailiff had recognized my non-model citizen client and called downstairs. The defense attorney bolted to the clerk's office as soon as they took my client away to do the criminal check neither he nor I had done prior to trial. Having no idea how to handle a client in custody, I got permission from opposing counsel and called the judge that night. He told me "It's not my problem, son" but assured me that he would make sure that they changed my client into his civilian clothes and brought him up each day before the jury arrived. It was a long trial where each driver sued the other, resulting in two defense lawyers plus plaintiff's lawyers for the drivers and the passengers. As such, the trial lasted past Wednesday, at which time my client apparently made bail. With cross-examination having been very unpleasant on Wednesday, he was a no-show on Thursday. I went on with the trial without my client on Thursday and then went out to his trailer on Friday morning, got him and brought him back to court for jury arguments and the verdict. I somehow managed to get a verdict in that case too, but the war story is far more valuable.

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

I started out at a large firm and had several mentors. The person with whom I worked most often and who I would choose if I had to identify one "mentor" was **Charles Ellis**. He taught me many things, but the best lesson I learned from him was not to waste time worrying about things you cannot control, and spinning your wheels on aspects of the case that do not matter. Get it straight so that you can carry your burden of proof and then press forward to verdict, which will often lead to settlement. And no matter what happens, never let anybody see you worry about the case, particularly the judge or the jury.

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

I would tell new lawyers to seek out a mentor who they can trust. NCAJ has a mentor program, and there are numerous people in any county who would be more than happy to assist a new lawyer. I would also tell them that they need to be completely courteous to all clerks and court personnel, other lawyers and staff of other law firms. There are some folks, particularly those without a good mentor in their background, who think they have to "play the role" in order to be an effective attorney. No one ever forgets or forgives an unpleasant experience with a lawyer, particularly a new lawyer.

5) How has the insurance defense bar changed?

The insurance defense bar in Eastern North Carolina has not changed much. Eventually, they will have to retire, but I am dealing with the same people I did when I started back in the early 90s. I do occasionally draw some unpleasant folks from points west, but the way I handle a personal injury suit is to minimize the occasions in which I talk to the other lawyer anyway. They don't have any authority to settle a suit so there is no point.

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

When I think back to the very early days of my practice, I can still remember a time when Allstate, Nationwide, State Farm and the others would actually listen to their lawyer and factor in intangibles such as a likeable client and a lawyer who is just crazy enough to try a case. Those days are over.

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

I think the clients that have touched me the most over the years have been the children. Probably the one that caused me to be moved the most emotionally on the first visit was the profoundly injured young girl who I

represented in a birth injury case. I will always remember the first time I saw her.

Don Higley is a graduate of the University of North Carolina at Chapel Hill and received his J.D. Degree from Campbell University's Norman Adrian Wiggins School of Law in 1994. He currently practices with *Hopf & Higley*, located at 1694 East Arlington Boulevard, Suite E, Greenville, North Carolina 27858. On August 1, 2010, Don will join *Lanier Law Group, P.A.*, 108 W. Firetower Road, Suite G, Winterville, North Carolina 28590. Don's practice focuses on Personal Injury, Business Litigation, Environmental and Construction Law. He can currently be contacted at (252) 756-1883 or don@hopfhigley.com.

Convention 2010: A Wrap-Up

Read these interesting highlights from NCAJ's Annual Convention that was held, for the first time, at the Hilton Riverside in wonderful Wilmington!

U.S. ATTORNEY GENERAL ERIC HOLDER'S ADDRESS - Saturday, June 19

Ann Groninger reported that in his short speech at Saturday's conference luncheon, *United States Attorney General Eric Holder* discussed multiple failings in the nation's criminal justice system and the role he expects the Justice Department to play in addressing those failings. Lack of funding and resources is preventing those accused of crimes, including juveniles, from getting the representation promised by the Sixth Amendment and Gideon v. Wainwright. A strong community depends on a working justice system and a working justice system depends on adequate representation for both sides. Prosecutors, as well as judges and defense attorneys, have a responsibility in ensuring that justice is done.

Holder described three areas on which government must focus: (1) creating ongoing dialogue at all levels of government; (2) raising awareness; (3) expanding the role of the public defense system and shaping policies to empower the communities that the system serves. In furtherance of these goals, the Justice Department in March launched the Access to Justice Initiative, headed by Harvard Law Professor Lawrence Tribe, to attempt to improve the indigent defense system.

AUTO TORTS SECTION MEETING - Sunday, June 20

Stewart Clontz reported that the Section Meeting was run by **Don Higley**. Nominations for the 2010-11 Section Officer roster were held. The 2010-11 Section Officer roster was unanimously approved by Section members in attendance with **Doug Abrams** making a motion for approval of the roster and **Chris Nichols** seconding the motion. The 2010-11 Auto Torts Section Officer roster is listed at the bottom of this newsletter.

Most of the discussion at the Section Meeting focused on the details associated with the UATRA bill. **Dave Pishko, Dick Taylor, Burton Craige, Phil Baddour, Doug Abrams, Chris Nichols** and others discussed varying aspects of the bill, the fight for it, the legislative process, current and future legislative prospects and NCAJ's decision to pull support for the bill since an organizational compromise on certain aspects of the bill could not be reached.

Another important issue addressed was to make Section members aware of the serious implications of creating bad law from ill-advised appeals or arguments on the appellate level. Section members discussed a few of the resources that are available to them (amicus brief support, Section listserv) to avoid actions that lead to bad law as well as how important it is to support candidates that benefit Section members' clients and causes and how this is accomplished through staunch support of NCAJ PAC.

Before adjourning, other issues discussed at the Section Meeting included: the upcoming and planned Section CLE events; the Section e-newsletter and NCAJ blog; possible future legislative issues such as raising the NCGS Section 6-21.1 limit to \$25,000; selection/rejection law; listserv security; membership; publications and the necessity of PAC funding.

AUTO TORTS SECTION CASE LAW UPDATE - Monday, June 21

Sean Cole presented the case law update at Convention and has provided these highlights: The Section Case Law Update this year featured a mixed bag of cases, with a broad range of topics, and a broad range of rulings good and bad: Beckles-Palomares v. Logan, 688 S.E. 2d 758 (2010) (disallowing the public duty doctrine as a defense); Biggers v. Bald Head Island, 682 S.E. 2d 423 (2010) (products liability for golf carts & no municipal liability for failure to enact safety statutes); Blackwell v. Hatley, 688 S.E.2d 72 (2010) (contributory negligence & city v. state liability for maintaining streets); Hewett v. Weisser, 689 S.E.2d 408 (2009) (overruling and remanding due to ridiculous accord and satisfaction defense); Henry v. Knudsen, 2010 WL 1541499 (N.C. App.) (sudden incapacitation defense); Holloway v. N.C. Dept. of Crime Control & Public Safety, 676 S.E.2d 573 (2009) (STCA

case regarding liability of State Troopers); Noble v. Hooters of Greenville, 681 S.E.2d 448 (N.C. App. 2009) (discussing liability under Chapter 18B for alcohol service and UDTPA claim); Phillips v. NCDOT, 684 S.E.2d 725 (N.C. App. 2009) (STCA case regarding DOT negligence for maintaining and inspecting highway shoulders).

BOARD OF GOVERNORS MEETINGS - Monday, June 21 & Wednesday, June 23

Mike Jordan reported that the NCAJ Board of Governors meets twice at Convention with the Monday meeting comprised of the outgoing, or 2009-10, Board of Governors and the Wednesday meeting, comprised of the newly-elected, or 2010-11, Board of Governors.

The Monday meeting was a luncheon where outgoing Governors were given accolades and an award as a thank you for their tremendous service to NCAJ.

The Wednesday meeting served as the first convening business meeting of the newly-elected 2010-11 Board of Governors. At the Wednesday meeting, **Immediate Past President Dave Pishko** reviewed the accomplishments of 2009-10 while **President Phil Baddour** explained his vision for the organization for 2010-11. In addition, each Vice President was introduced and given the opportunity to explain the goals for his or her Committee during 2010-11.

After the introductions, the primary topics of discussion centered around a recap of NCAJ's efforts to pass UATRA, responsibilities of Board members, education initiatives, the financial position of NCAJ, and ideas to enhance communication with NCAJ members. The Board of Governors voted to adopt an aspirational statement put forth by NCAJ's Disability Section and also voted on corrective housekeeping language changes to the PAC Trustee agreement.

Miss Convention in Wilmington this year? No worries - you can experience Wilmington in 2011 when NCAJ returns to the Hilton Riverside for Convention!

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.

- Punitive Trial
- Defendant Dies
- Appellate Procedure
- UIM and Umbrella coverage
- THC expert
- Question re Procedure in Tort Claim act
- Filing AA Separately v. Together
- Lighting Requirements For Bicycles
- WD/UM - Rental Car
- Case Value
- Legislature Finishing Session
- NCACC Liability and Property Pool
- Defense discovery abuses
- OT - mad goat
- Closed Head Injury
- UATRA and "billed vs. paid"
- Subpoena to nonparty
- WD Disbursement/Adoption Issue Question
- Coverage Question
- Motion to intervene
- Answer of Gross Contributory Negligence
- Ins Co Wants Refund after settling PD
- Looking for Specific Depo Questions
- New ERISA Reimbursement Decision
- Phantom Vehicle
- OT-Complaint Against Bicyclist
- Defense counsel takes depo in violation of Rules
- AG's Office Cases and Tort Claims, etc.
- Johnston County verdict
- Clerk won't enter entry of default?
- How to Dismiss UIM Carrier
- GMAC settlement requirements
- Client's involuntary commitment
- Honking before overtaking/passing
- Garage Policy and Pro/Cons of Suing
- Owner of vehicle

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, contact [Andrea Davis](#) today to set-up your Section listserv account.

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

Update Your Membership Profile Before It's Too Late!

Make sure that your contact information on file with NCAJ is accurate so other NCAJ members know how to reach you! A new edition of the NCAJ Membership Directory will be printed soon. Please check to see that your membership profile is up-to-date and complete by logging into your membership profile [here](#).

La Fiesta – Volunteer Today!

It's Fiesta time! Volunteer today to represent the North Carolina Advocates for Justice at the NCAJ booth at La Fiesta del Pueblo which will be held indoors at the North Carolina State Fairgrounds in Raleigh on Saturday, September 11 and Sunday, September 12. La Fiesta del Pueblo is an annual event organized by El Pueblo, a North Carolina non-profit statewide advocacy and public policy organization dedicated to strengthening the Latino community.

As a NCAJ volunteer you will answer questions from the general public who stop by the NCAJ booth at La Fiesta. In addition to the tremendous public service, volunteering for La Fiesta is a great way to make the general public aware of your organization or firm.

For more details or to volunteer to staff the NCAJ booth at La Fiesta, please email Andrea Davis at AndreaD@ncaj.com. If you are volunteering, please indicate which shift would work best with your schedule: Saturday, September 11 from 12-3 PM, 3-6 PM or 6-8 PM; or Sunday, September 12 from Noon-3 PM or 3-6 PM. Although it is not a mandatory requirement, those members who speak Spanish are strongly encouraged to participate in Fiesta.

Many Thanks, in advance, for Volunteering for this AWESOME Public Outreach Event!

Upcoming Events – Check It Out!

Mark Your Calendar for this Great Seminar!

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

*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](#) for a detailed brochure or to register.

Interested in other CLE topics? Please [click here](#) for the full schedule of upcoming live educational seminars and video replays.

Save the Date!
MOUNTAIN MAGIC 2010
 October 14-17, 2010
 Grove Park Inn
 Asheville

Make plans NOW to attend Mountain Magic 2010 at the Grove Park Inn in Asheville on October 14-17, 2010! Mountain Magic offers informative CLE for the criminal and civil practitioner and 6.0 hours CPE for paralegals and legal assistants. There are lots of networking opportunities at the section meetings and plenty of time to relax and unwind at the many social gatherings. Mark your calendar and make your hotel reservation today by calling the Grove Park Inn at (800) 438-5800 or (828) 252-2711 and mentioning that you are with the Trial Lawyers.

Renew Your NCAJ Membership Today!

Please remember that your NCAJ membership renewal was due on July 1! To continue to partake in the many benefits of NCAJ membership, including access to section listservs, social events and discounted CLEs, please [click here](#) to renew your membership for the July 2010-June 2011 year.

2010-11 Auto Torts Section Officers

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Vice Chair & Ethics Chair: [R. Alfred Patrick](#) (Greenville)
Secretary: [Stewart Clontz](#) (Durham)
Immediate Past Chair: [Jeremy Tanner](#) (Clayton)
At Large Member: [Julie Bell](#) Winston-Salem
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CLE Co-Chair: [Michelle Clifton](#) (Winston-Salem)
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