
Greetings from Evans & Co. Counselors and Litigators,
with our holiday edition of our Case Notes series.

Our bonus presentation, an important **Wyoming aviation law case** which we litigated, with application to ***a broad variety of cases where more than one type of insurance is triggered***, is our extra gift to all of you.

We write with our regular updates on insurance, construction defect, and commercial auto law in the states of **North Carolina** and **South Carolina**. As many of your know, firm attorneys frequently participate in **South Carolina** claims on behalf of several insurers and, of course, are involved in **North Carolina** defense and coverage matters on a daily basis through our Greensboro, NC office.

Please recall that our past ***Case Notes*** are archived at evanslawfirm.com and we would be pleased to bring current the decisions on which we've reported previously, at your request.

The **North Carolina** Court of Appeals has ruled on a condominium association's construction defect claim, which raised recurring questions of *whether a statute of limitation defense inures to the benefit of a general contractor (yes) and a developer (no); whether the presence of the developer's representatives on the condo board tolled the statute (question of fact for the jury), and whether repairs toll the statue (they do not)*. This is important reading for defense as well as coverage considerations for construction defect insurers.

In a *property damage case* litigated up to the 4th Circuit Court of Appeal, applying North Carolina law, the doctrine of **waiver was applied to overcome the insurer's right to rescind**, where the insured had an inspection report showing fire safety shortcomings, but had not gotten around to reading it (or acting on it) before the premises was destroyed by fire. So, open your mail and read it!

The South Carolina Supreme Court takes issue with GEICO's smarmy bodily injury “step down” provision for injuries to family members, reducing purchased coverage to minimum statutorily limits: voided as a matter of public policy.

We also digest at South Carolina Court of Appeals case which will be useful to the determination of qualifications of testifying experts, and a construction defect coverage case where insurers will be pleased to know that the exclusion for “your work” was upheld.

Our bonus is a copy of the current **Aviation Law Reporter**[1]** which presents a handful of interesting aviation precedents, and a close analysis of a recent important insurance law case litigated by Evans & CO. to a coverage victory in Wyoming Federal District court. The case provides insights into coordination of ***disparate coverages that may be triggered by a single occurrence, and how exclusions may apply*** to assure that only one duty to indemnify arises.

Click *here* for our ***Case Notes*** for **both states**.

Click *here* for **North Carolina** only.

Click *here* for **South Carolina** only.

Click *here* to see **Aviation Law Reporter no. 1536** with a link to an a scholarly discussion of a **Wyoming** insurance coverage case.

Click *here* to go to the **Evans & Co. law firm website** for firm information and *access to prior Case Notes*.

Click *here* to send an email asking for colleagues and friends to be added to our ***Case Notes*** mailing list.

[1]The Aviation Law Report Letter is reprinted with permission from Aviation Law Reports, No. 1536, November 25, 2014. © CCH Incorporated. The case in question will also be featured in an upcoming issue of the Insurance Law Daily. If you would like to arrange a subscription to either reporter, please call 800-344-3734 or visit http://www.wklawbusiness.com/store and enter either "aviation" or "insurance" to view these publications and related products.


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Greetings!

Welcome to a new edition of **Evans & Co.'s *Case Notes***, a continuing digest of important new cases in the areas of ***insurance coverage, construction defect, and commercial auto law***, in states in which we work. We write this month with updates in the states of **Texas** and **Louisiana,** with cases from state supreme and appellate courts, and from federal courts construing the laws of those states.

You may access our entire brief by clicking here, or **Texas** only here and **Louisiana** only here. Our brief this month is **35 pages of summaries and practical evaluation of case law**, offering far more than the brief comments below.

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In **TEXAS**, their Supreme Court articulates (and perpetuates) the difference between a condition of insurance coverage, and an exclusion from coverage – the latter when breached ***does not require proof of a causal relation between the breach and the loss, nor proof of "prejudice"***. In the area of premises liability, we brief a ***business invitee warning case and a trespasser case***. The Supreme Court provides guidance on **spoliation issues**, and on **hospital liens**.

Texas appellate courts provide cases on the requirement that a ***loss submitted under a commercial auto policy must arise from the "use" of a vehicle*** (the tank farm leak did not); and that a **flood exclusion applies to human-caused diverted water** resulting in flood property damage.

Federal courts applying Texas law further develop the question of when an insurer might (and might not) have to **pay for independent defense counsel**, selected by an insured, when there is a reservation of rights, and ***whether the duty to defend is still an "eight corners" test or if extraneous evidence can be brought to bear*** to show the claim is outside of the policy period.

In **LOUISIANA**, their Supreme Court issued an important decision ***upholding a forum selection clause (in favor of a Texas forum) in a commercial contract***. Equally important for commercial and private contracts, the supposed underpinnings in the Louisiana Civil Code, for rejection of forum selection clauses as being against public

policy, is held to be inapposite to the issue. In another case, the Supreme Court analyzes the **insured's obligations to report under a claims-made policy**, and upholds a denial based on late reporting.

Turning the Federal Courts applying Louisiana law, we digest a case where i***nsured contracts coverage, additional insured claims, indemnity obligations, and statutory prohibition of indemnity*** are interwoven into the outcome. Finally we present a case where an architect failed in his attempt to get his **general liability carrier to pay for losses due to professional liabilities**.

We hope you find these updates helpful and note that you may find them archived at our firm's website, **evanslawfirm.com**. We are always glad to provide enhanced interpretations of these and other cases for application to the particular facts of claims that you may be considering.

Click here for our **Case Notes** for all states (35 pages).
Click here for **Texas** only ( 21 pages).
Click here for **Louisiana** only (15 pages).
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Click **here** to send us a message, or to ask that your colleagues be added to our mailings.


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Greetings!

Hello again! We have a new edition of Evans & Co.'s ***Case Notes***, a continuing digest of important new cases in the areas of ***insurance coverage, construction defect, and commercial auto law***, in states in which we work. We write this month with updates in the states of **Arizona** and **New Mexico,** with cases from State Supreme and Appellate Courts, and from Federal Courts construing the laws of those states.

Below we highlight a few points of law and practice which are developed in much greater detail in the 23 page brief that accompanies this email.

You may access our entire brief by clicking here, or **Arizona** only here and **New Mexico** only here.

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We are always litigating some aspect of the law of issue preclusion – ***res judicata*** and **collateral estoppel** – in the context of liability proceedings and related declaratory or other coverage proceedings. We report on how the Arizona Supreme Court replies to a certified question on **whether an insurer that did not tender a defense, had a right to litigated issues of coverage** in a declaratory judgment action.

A Federal Court of Appeals, applying Arizona law, opines that ***an assault and battery exclusion triggered by one insured, also suspends coverage for other, innocent insureds***. This holding should extend to other coverage exclusions which may be triggered by some but not all insureds.

While CGL carriers try to craft their policies to exclude transportation risks like commercial auto, and commercial auto carriers try to limit their exposures to occurrences “arising out of use of motor vehicles”, we provide an Arizona case where the **allegations of negligent supervision/dram shop liability, along with the facts of a drunken driving accident (around 20 times the legal limit!) triggered both and both insurers were found to be exposed to both defense and indemnity** in equal shares.

Applying Arizona law, a Federal District Court appears to have construed construction defect policies issued to subcontractors, either prior to the presence of “ongoing operations only” additional insured endorsements, or ignored the effect of such endorsements, in ***a wholesale holding that all subcontractors' insurers owed a duty to defend and and to indemnify a general contractor***. CD insurers operating in Arizona should study this case and craft wordings or strategies which work around its outcome – on which we can assist.

In **New Mexico**, the state Supreme Court, and others, continue to wrestle with **UM/UIM** issues, particularly those engendered by the judicial generosity afforded by the results of **stacking** those policies, including the permitted, arcane language under which ***UM/UIM may be rejected***.

Where a commercial auto liability claimant was failed to prove fault in a truck driver, the Tenth Circuit Court of Appeals, applying New Mexico law, sensibly held that ***no negligent hiring or negligent supervision claim against the employer survives***.

In a relatively rare, substantive discussion of insurance issues under New Mexico law, the same Tenth Circuit noted that the **different wordings of primary and excess policies, in respect of an exclusion (contained in excess but not in primary) would benefit excess only** – how the appellant felt it cold be otherwise is beyond us!

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