Greetings from Evans & Co. with another ***Case Notes*** summary of important developments in the courts where we practice. We write this month with updates on insurance, construction defect, and commercial auto law in the states of **North Carolina** and **South Carolina**. Firm attorneys frequently participate in **South Carolina** claims on behalf of several insurers and, of course, are involved in **North Carolina** claims and coverage matters on a daily basis through our Greensboro, NC office.

You may access our entire brief by pressing here, or **North Carolina** only here, and **South Carolina** only here**.**

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.

Several recent and noteworthy **North Carolina** cases are reported and discussed at length in the current digest. Significant is a recent decision of the Supreme Court of the state extending immunity from malicious prosecution to insurance adjusters or investigators who report suspicions of wrongdoing to law enforcement as a result of their work which then results in a criminal prosecution. *The Court adopted the Restatement (Second) of Torts, Sec. 653, test in the state as a basis for its opinion.*

Uninsured/underinsured cases have frequently been a subject of court action in **North Carolina** and the trend continues as opinions from the Court of Appeals handed down in the past several months have added to this body of law. Cases dealing with allocation of credits among multiple UIM policies, residency of a family member seeking UIM coverage and the facts triggering UIM coverage have all been decided and are featured in our piece. The appealability of an interlocutory decision by an insurer was also addressed by the court in the context of a dispute based upon a dispute involving “family member” coverage under policy language. Finally, a discussed decision highlights the risks of seeking coverage determinations in the federal courts of the state given the willingness of those courts to defer to parallel and related state court actions.

In **South Carolina**, the Supreme Court has decided numerous insurance cases which results in an unusually long ***Case Notes*** brief -- we recommend insurers and their vendors pay close attention. *The Court has upheld a default judgment against a carrier recognizing that policy service of suit provisions may substitute for statutory sections setting out the means for service on an insurer in* ***South Carolina****.* Significant cases also address how claims for contribution against joint tortfeasors

should be preserved and asserted, the application of the collateral source rule in the context of a UIM claim, and coverage exclusions for defective construction work.

Numerous federal cases from **South Carolina** have recently been handed down and are featured, including an appellate decision from the Fourth Circuit discussing when nominal or punitive damages may be assessed in the absence of an ascertainable loss. The federal district court of the state has also been busy with insurance issues, and several reported decisions dealing with *frequent coverage exclusions, the standing of a party to sue under a policy coverage, and scope of insurance issued to an LLC* are highlighted in the newsletter. We also discuss a decision in which the **South Carolina** federal court *declined coverage to a parent insurer for policies written by a subsidiary entity.*

For further information on any of these cases, or the implications they may have on existing claims or disputes in **North Carolina** or **South Carolina**, you may contact **Robert G. McIver**, who heads those offices, at rmciver@evanslawfirm.com.

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

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

You may access our entire brief by clicking here, or **Colorado** only here, **Utah** only here, and **Wyoming** only here. 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.

Our ***Case Notes*** digests generally only report decisions of appellate courts, but our law firm also collects and analyzes many trial-level court opinions on coverage, construction defect, and commercial auto. While these cases are technically not precedent, they offer insight into the past actions of active trial judges, which they are likely to follow, and some trends which can lead towards appellate resolution. We always provide our clients with these additional insights when instructed on cases where they might be apposite. Let us know if you require that sort of deeper insight into the trial-level rulings that may affect the outcome of your cases.

In **Colorado,** the Supreme Court construes the scope of the common-law *attractive nuisance doctrine* for children who are not trespassers, and gives them the benefit of that doctrine even though it was argued that **Colorado's** premises liability statute would seem to have removed those protections.

The Court of Appeals again rebuffs an assault on *the statutory immunity of ski resorts*, in this case for death resulting from avalanche.

In recurring litigation over the effective dates of statutes, and application of statutory limitations in contracts with homeowners, the Court of Appeals avoided the question of whether the Homeowners Protection Act of 2007 would extend to commercial owners, holding instead that *the contract predated the Act* and would be upheld under general contract principles.
We move now to **Utah**. *While we hope you don't have to undo default*

judgments, if you do, the Utah Supreme Court has set out a road map, by applying widely-accepted tests for whether service of process was effective, and allowing a default to be set aside where there is no evidence of willful neglect, and where a meritorious defense exists. *By the same token, if you are seeking to make a default stick (say where an insured has not answered a declaratory judgment action), the case we brief will give you a template for getting a reliable default.*

In another **Utah** case, homeowners' insurers battled over whether vehicle use on a “common area” in a residential development, was or was not an “insured location” in the homeowners' policy. The off-road vehicle which caused the personal injury does not seem to have been itself insured, and there is no mention of there being premises liability insurance purchased by the homeowners association or equivalent. *By extending the homeowners insured location to cover the common area, the appellate court found some coverage for the personal injury damages.* Homeowners insurers be on notice that your “insured location” may be larger than you thought.

In an interesting construction defect case, the Utah Court of Appeals construed a claim by a general contractor for coverage as a named insured, *when in fact it was an additional insured.* The case presented damages to the named insured subcontractors' work product (masonry) without apparent consequential damage. *Since the named insured's work product defect was excluded, there could be no coverage for an additional insured.* Construction defect insurers should study this case with their counsel to see if they can duplicate this result in other jurisdictions.

We also digest a Federal Court decision, applying **Utah** law, dealing with similar AI issues and reaching the same conclusions, which underscores the stability of **Utah** law on this point.

Finally, we present a **Utah** case where *loss of consortium is found not to be “bodily injury” and therefore not subject to a separate UIM limit* – possibly useful as well in connection with other cases where loss of consortium is plead.

Turning to **Wyoming**, we digest a Supreme Court case with a familiar pattern, where a truck insurer had paid past claims that were excluded from coverage, leading to a claim of ***insurance by estoppel*** for a new claim of the same type. ***Wyoming*** *has clearly rejected insurance by estoppel.* In the same ruling, the insurance agent that provided the limited coverage, was exculpated from professional liability for the limitations.

Our second **Wyoming** case provides a useful discussion of the circumstance in which *a punitive damages claim, clearly unfavored under **Wyoming** law, can survive a motion to dismiss*. This case will be studied by both sides for insights into fact development that can get or prevent a punitive damages claim from getting to a jury.

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.

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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***, for the 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.

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In **TEXAS**, their Supreme Court had entertained the possibility of an interesting expansion of ***"insured contracts"*** coverage in standard CGL forms, and concluded that a written warranty of workmanlike performance is not an "assumption of liability" that would exist in the absence of the warranty, and therefore, was not insured under the policy. In keeping with prior jurisprudence ***narrowly applying the "Stowers" doctrine***, a court of appeals held that the attempt to make a less-than-complete-and-final-demand (holding open negligence claims against the driver, i.e. a permissive user, of the eighteen-wheel truck owned by the insured) was ineffective.

We learn in a court of appeals case that a "domestic employee" is unambiguously a person who works in a home – and is not to be confused with overseas employees as the plaintiff had hoped, suggesting there was a policy ambiguity.

In a case based on a comedy of criminal error (thieves entered through a cut in a fence that was in fact not continuous around a property perimeter, as required by policy endorsement), the **Texas Anti-Technicality Statute** did not

permit the insurer to decline the theft loss coverage based on the defective part of the fence that the thieves didn't enter through. Thus *in a first party claim a breach of a condition of coverage must be causally related to the loss to void coverage*.

In a cancellation of coverage case, an *insured who sustained a fire loss after coverage was canceled*, failed to convince a federal court, applying Texas law, that the insurer's failure to give notice to the mortgagee voided the cancellation.

Another federal court enforced *policy terms limiting the time for suit against the insurer*, holding they *prime general statute of limitation periods*.

In **LOUISIANA**, their Supreme Court has taken on the question of *whether plaintiffs can obtain as damages, the windfall difference between the "retail" price of medical services, and the discounted amount* they actually pay as a consequence of insurance company fee reductions or other programs that achieve discounts from those amounts.

In an interesting **forum selection clause** case, the Supreme Court held that where the original forum was proper as to the original litigants, a third-party defendant could not enforce a forum selection clause to have litigation elsewhere. While this is a practical result, where an insured or insurer is relying on the benefits of a forum selection clause for reliable or economical litigation, the lesson is, be first to the courthouse.

We digest a case which explores the limitations on *insurance that is available to innocent third parties accompanying others during the commission of a crime*, and another discussing limits on insurance **where a worker commits a tort against a fellow worker.**

We've worked on many **restaurant fire cases** and *thus it was of interest to us to see that a federal court, applying Louisiana law, held that fire insurance terms were breached where the insured had semi-annual inspections of a fire suppression system in its kitchen, but the system failed to go off* when the fire occurred despite regular, timely, professional inspection and service. Applicable code and industry practices delegate the maintenance of fire suppression systems to trained and licensed professionals. The insurer's policy required the insured to maintain the system in "complete working order." Unfortunately, owners can't tell whether or not a system is in "complete working order." With the exception of obvious trauma to a suppression

system, whether or not it will go off can be found only by setting it off, which would defeat the economic and practical use of the system. (Many fires that occur in kitchens are also not of the sort that the fire suppression system is designed to suppress, which was glossed over in this case.) *The insurer prevailed in denying the claim on its endorsement, which of course provides ephemeral and aleatory coverage, based on circumstances beyond the insured's control.* What would the Texas Anti-Technical Statute done here -- or an effective public policy argument for the insured? The correct result would have been to find coverage under the property policy, with the property insurer subrogating against the fire suppression professional.

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