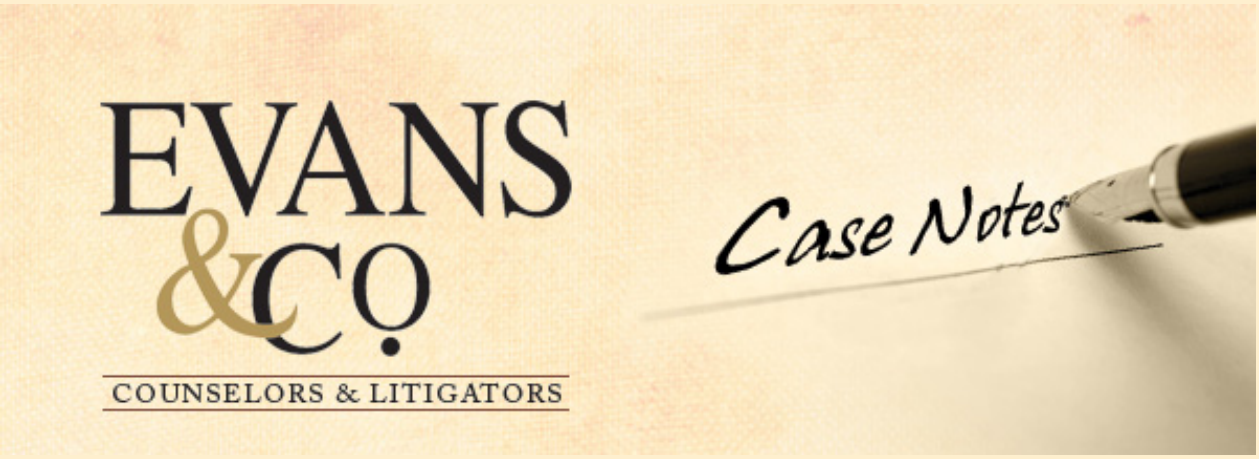

Hello again! Welcome to a new edition of Evans & Co.'s ***Case Notes***, a continuing digest of important new cases in the areas of ***insurance coverage, construction defect, and commercial auto law*** in the states in which we work. We write this month with updates in the states of **Arizona** and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

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

As always, 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. We also have trial court decisions bearing on the issues covered, available on your request via email reply.

Arizona joins other jurisdictions in holding ***a daughter is not her fathers' relative***, at least for purposes of uninsured motorists coverage purchased by the father, where the daughter resided with the father and had her own vehicle covered on a separate policy (presumably without UM/UIM coverage).

In an important ***property loss case, with allegations of insurer bad faith***, an Arizona appellate court offered instruction on the **discovery of the claim file** and on **attorney-client privilege** in bad faith litigation. In another property loss case, the insurer succeeded in a **non-cooperation denial** where the insured had not disclosed evidence of the value of the property.

In a strangely-litigated construction defect case, **a carrier took the position that it had no duty to defend or indemnify because natural stucco defects fell within the EFIS exclusion.** For those of us who work in this area, it hardly seems necessary to write the next sentence. Unfortunately the carrier not only lost its worthless argument on EFIS, it aroused the ire of the court sufficiently to create a new law that ***a duty to defend under indemnity agreements arises at the time of tender***, not when the basis of the legal obligation is clarified after trial and judgment. This is not the first time we have seen improvident coverage positions, leading to judgments which burden not only the errant carrier, but change the landscape for more careful insurers.

We await eagerly the outcome of a question certified to the Arizona Supreme Court, by a federal district court: **Where an insured denies coverage and does not defend, is the insurer estopped from raising their coverage defense in a subsequent collection action based on a default judgment?** We will digest the outcome when it appears.

In **New Mexico**, we digest two cases of great importance to **truck and commercial auto insurers.** Where the schedule of vehicles on a liability policy included both tractors and trailers, and the policy provided for $1million of coverage for all “covered autos”, a ***scheduled tractor-trailer collision triggered $2million of coverage***. A subsequent federal court case held that **this outcome was not changed by anti-stacking language in the policy**.

Punitive damages must be raised early in the case and not at the time of a pretrial order, under a recent federal district court case applying New Mexico law.

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 both states.
Click here for **Arizona** only.
Click here for **New Mexico** only.
Click here to go to the **Evans & Co. law firm website** for firm information and access to prior case digests.

Click here to send us a message, or to ask that your colleagues be added to our mailings.

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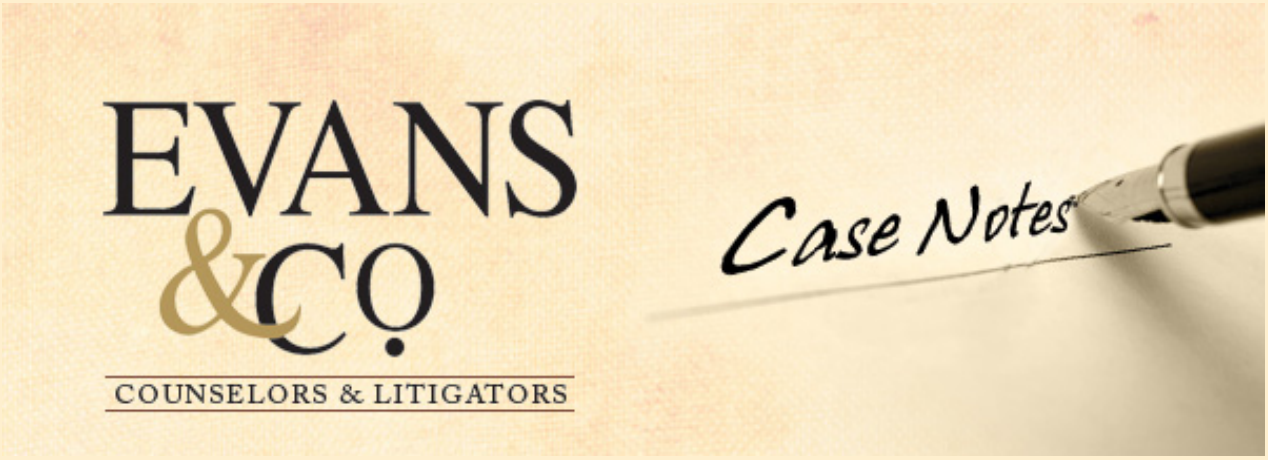

Greetings from Evans & Co. Counselors and Litigators, with another edition of our ***Case Notes*** series. We write this month with updates on insurance, construction defect, and commercial auto law in the states of **North Carolina** and **South Carolina**. As many of your know, firm attorneys frequently participate in **South Carolina** claims on behalf of several insurers and, of course, are involved in **North Carolina** claims 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.

A **North Carolina** appellate court extends the scope of commercial auto coverage to include **"loading and unloading"** even on the steps leading into a home "because it was part of the transport service". Another case we digest examines the **requirements of service of process on an insurer**. In our third case, a property insurer successfully avoided theft loss claims by showing that **the building was 70% unoccupied and thus met the definition of "vacant"**. A federal court, applying North Carolina law, **construes UM/UIM coverages in supplemental (renter's) insurance**, and reaches the conclusion that no UIM coverage was in effect.

The South Carolina Supreme Court has brought a little clarity to the developing law on a ***premises owners' potential liability for negligence in failing to provide adequate security, where patrons are injured by criminal acts*** on the premises. The plaintiff was shot at a check cashing/pay-day lending business with no history of violence. She claimed violence was foreseeable and a security guard should have been posted. With an apparent wink to the weakness of the plaintiff's case, the Supreme Court held that the claim had a scintilla of evidence to support it and thus could not be dismissed on summary judgment.

In a case with an unfortunate social background, **UIM coverage was denied to an on-again, off-again fiancée**, hailing from a state that did not recognize common-law marriage, who was also the father of the named insured's child. Perhaps the burdens of marital law (on the insured) outweighed the benefits of a tort recovery for the fiancée-mother. In any event since common-law marriage was disproved (based on the

insured's deposition testimony), there was no UIM for the unrelated household resident fiancée. One wonders what further changes to the family unit followed the judicial pronouncements.

Click *here* for our ***Case Notes*** for **both states**.
Click *here* for **North Carolina** only.
Click *here* for **South Carolina** only.

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

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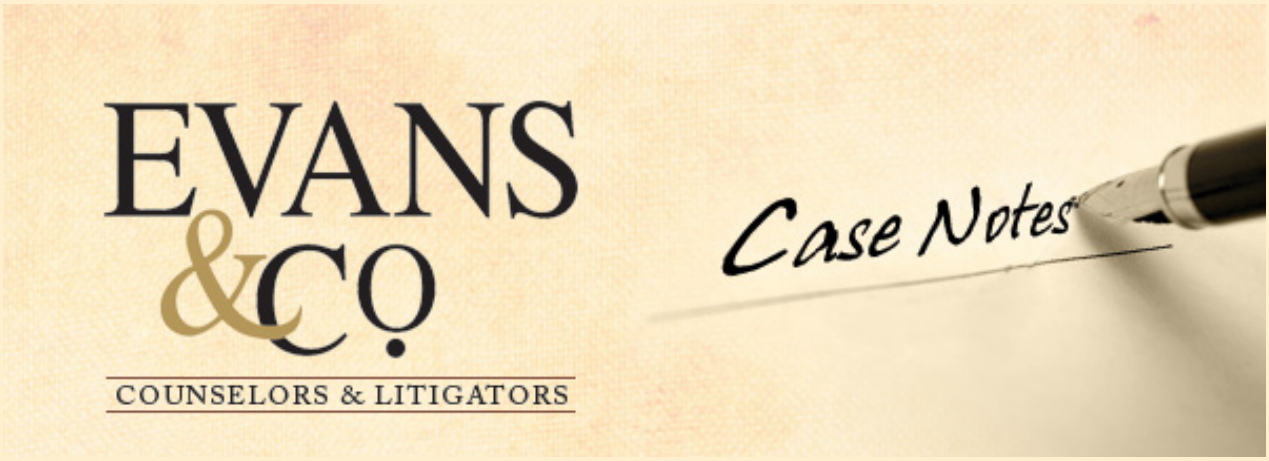

Greetings from Evans & Co. Counselors and Litigators, with another Case Notes series. We write this month with updates on insurance, construction defect, and commercial auto law in the states of Colorado, Utah and Wyoming. We are very active in these states and keep close watch for developments in these areas of law, including decisions at the trial court level. Below we refer to a few of the cases we find interesting; our attachment has more cases digested and those deserve a read, too.

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.

In **Colorado**, we examine an interesting, first-party builder's risk claim, decided in Federal Court under Colorado law. The case is less interesting for its holding – that "excessive rain" causing damage to pumps, will support a builder's risk claim for re-doing prior site preparation work (but not a new, revised scope of site preparation work) than for its ***discussion of bad faith law***, including the suggestion that insurer's prompt hiring of an expert witness and a reasonable dispute over the amount owed insulated the insure from bad faith exposure – *where the insurer failed to tender the undisputed amount of the claim!* We also digest a first-party homeowners' claim, where the insurer prevailed on ***denial due to the earth movement exclusion***, and of course, the accompanying bad faith claim was denied there as well.

Colorado insurers **may rely on time-limits for bringing claims under their policies**, which are shorter than the state statutory limitations periods, under a case we digest, underscoring existing law.

Turning to **Utah** law, we present a rare case where ***an insurer successfully denied a claim based on late notice.*** The homeowner's claim was presented around three years after the loss, but the same carrier was defending a different insured on a liability policy arising out of construction defects to the premises, beginning just a year after the loss. It appears the insurer benefited from having the left hand not know what the right hand was doing, which is about as rare as a successful late notice denial.

Continuing the string of bad faith victories for insurers that we took up above in Colorado, we offer a **Utah case where bad faith was rejected, where the claim was**

“fairly debatable” because there was not witness to the alleged collision and the carrier expressed doubt that a collision had occurred. This case and the precedents it discusses should embolden Utah insurers to take coverage positions, which in other states might be less safe.

The **Wyoming** Supreme Court provides us with a case that reminds us that their *statute of limitations will be enforced* reliably, where a plaintiff fails to make valid service within 60 days of filing a complaint on the last possible days under the statute. “**Equitable estoppel**” said to arise from conversations with the defendant's adjuster *was soundly rejected*.

Click *here* for our ***Case Notes*** for all three states.
Click *here* for **Colorado** only.
Click *here* for **Utah** only.
Click here for Wyoming only.
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