

IN BRIEF

Vol. 16
April 18, 2008

An Insurance Industry Newsletter of Recent Issues and Opinions in Virginia Law By

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Amended, and . . . Mended

“A Bill to amend and reenact § 8.01-417 of the Code of Virginia relating to copies of statements or transcriptions by injured person to be delivered to him; copies of subpoenaed documents to be provided” was introduced in the General Assembly in the February session. Upon passage, it would have allowed an attorney, after giving written notice of representation, to contact the individual’s insurer requesting disclosure of the limits of liability of any motor vehicle liability or any personal injury liability insurance policy applicable to the claim. The insurer will then have thirty days in which to respond in writing to the request. The original text of House Bill 172 (1)(C) read as follows (line numbers added):

(1)C. After he gives written notice that he represents an injured person, an attorney may, prior (2)to the filing of a civil action for personal injuries sustained as a result of a motor vehicle (3)accident, request from any person who has issued an insurance agreement as described in (4)Rule 4:1 (b)(2)of the Rules of the Supreme Court of Virginia and that person shall disclose the (5)limits of liability for such insurance agreement in writing within 30 days of the receipt of such (6)request. The disclosure shall be made by sending a copy of the declarations page of such (7)agreement or its equivalent setting forth the limits of liability. The disclosure shall be (8)provided whether or not the person who issued the insurance agreement contests the (9)applicability of the agreement to the injured person’s claim. Information concerning the (10)insurance agreement is not by reason of disclosure pursuant to this subsection admissible as (11)evidence in trial. Nothing in this subsection shall be deemed to abrogate the provisions of (12)Rule 4:1(b)(2) of the Rules of the Supreme Court of Virginia.

Fortunately, the bill did not pass in its original form. Changes and amendments were added to create a much more balanced pre-litigation process. The first such addition is the phrase *“or an individual injured in a motor vehicle accident if he is not represented by counsel”*, which was inserted after the word “attorney” in line (1). This insertion allows an individual involved in an accident to obtain the coverage information without the necessity of hiring an attorney. A potential *pro se* plaintiff may make the request and receive the information. This may aid in early settlement of claims, for it would identify an individual who was contemplating litigation prior to the court’s involvement.

The second addition occurs in line (3) where the words *“in writing”* have been inserted after the word “request”. This addition has two very practical results. It insures that a record of the request is created thereby lessening the chance for disputes over whether in fact a request was actually made. Secondly, a written request gives a date certain from which to start the clock on the timing of a reply.

The next substantive change is the definition of which specific policies are involved. Thus the words, *“such insurance agreement”* in line (5) became “any motor vehicle liability or any personal injury liability insurance policy that may be applicable to the claim”. This is a much more specific statement to clarify any ambiguities.

The provisions that the insurer provide *“a copy of the declarations page or its equivalent”* found in line (6) and that this response be made to *all* requests *“within 30 days of the receipt of such request”* in line (5) were replaced by certain obligations placed on the requesting party. The requesting party must provide the following to the insurer:

- Date of the motor vehicle accident
- Name and last known address of the alleged tortfeasor
- A copy of the accident report, if any
- The claim number, if available

The injured person’s medical records, medical bills and wage-loss documentation
When all of this information has been received by the insurer, only if the total of the medical bills and lost wages equals or exceeds \$12,500 must the insurer respond within 30 days of receipt.

Finally the law clarifies the fact that by virtue of disclosing the limits of liability, the insurer is not admitting that “the alleged injury or damage is subject to the policy”. This statement was omitted in the original draft.

With the changes, House Bill 172 was transformed and put some limitations on the disclosure of information from the industry. The text of Paragraph (C) follows in its final form:

C. After he gives written notice that he represents an injured person, an attorney, or an individual injured in a motor vehicle accident if he is not represented by counsel, may, prior to the filing of a civil action for personal injuries sustained as a result of a motor vehicle accident, request in writing that the insurer disclose the limits of liability of any motor vehicle liability or any personal injury liability insurance policy that may be applicable to the claim. The requesting party shall provide the insurer with the date of the motor vehicle accident, the name and last known address of the alleged tortfeasor, a copy of the accident report, if any, and the claim number, if available. The requesting

party shall also submit to the insurer the injured person's medical records, medical bills, and wage-loss documentation, if applicable, pertaining to the claimed injury. If the total of all such medical bills and wage losses equals or exceeds \$12,500, the insurer shall respond in writing within 30 days of receipt of the request and shall disclose the limits of liability at the time of the accident of all such policies, regardless of whether the insurer contests the applicability of the policy to the injured person's claim. Disclosure of the policy limits under this section shall not constitute an admission that alleged injury or damage is subject to the policy. Information concerning the insurance policy is not by reason of disclosure pursuant to this subsection admissible as evidence at trial.

**DECISIONS BY THE SUPREME COURT OF VIRGINIA
REGARDING INSURANCE INDUSTRY ISSUES
April 18, 2008 SESSION**

The case summaries that follow involve insurance litigation or related issues. We have downloaded these summaries directly from the Virginia Supreme Court website. We offer them to you without further legal analysis. However, if you would like a brief legal analysis or the full text of any of these cases, please make your request by return e-mail. If you would like to discuss the ramifications of any of the decisions, please call (804) 378-7600: ext. 3304 for Ray; 3305 for Kevin or 3316 for Mark.

070614 Wright v. Minnicks 04/18/2008

In a wrongful death case, the circuit court erred in setting aside the original verdict for the plaintiff and ordering a new trial, where there was sufficient evidence in the first trial to support all parts of that verdict. In light of evidence that the plaintiff's marriage to the decedent was failing at the time of the decedent's demise, the jury could properly refuse to award solace damages, while awarding her expenses and compensatory damages for loss of the decedent's income, services, protection, care, and assistance. The verdict was thus not internally inconsistent and did not compel the conclusion that the jury misconceived or misunderstood either the facts or the law. The verdict in the second trial is set aside and vacated, the original verdict is reinstated and final judgment is entered thereon.

070720 Commonwealth v. Barker 04/18/2008

In a case concerning death and health insurance benefits provided to the surviving spouse of a law enforcement officer under the Line of Duty Act, the circuit court erred in making an award under Code § 9.1-402(A) since the evidence failed to establish that decedent's performance of his law enforcement duty was the direct or proximate cause of his death. However, the diagnosis of hypertension in the decedent's pre-employment physical examination is not a bar to use of the statutory presumption in Code § 65.2-402(B) because death by heart disease was a different medical condition. Thus, plaintiff is entitled to an award pursuant to Code § 9.1-402(B) and, as a result, the circuit court did not err in awarding health insurance benefits to the surviving spouse under Code § 9.1-401. The circuit court's judgment is reversed in part and final judgment is entered in plaintiff's favor in part.

070410 Bostic v. About Women OB/GYN, P.C. 04/18/2008

During a jury trial in a medical malpractice case, the circuit court erred in permitting the reading and exhibition to the jury of excerpts from medical literature without proper foundation as to their authoritativeness, or cautionary instructions. The testifying witness must, based upon his or her own knowledge and expertise, endorse the views of the author of such literature; further, an objection and request for a cautionary instruction based on this requirement were timely. The judgment is reversed and the case is remanded.

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