IN BRIEF

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PLAY AND PAY!?!?!
A Cautionary Tale

An unusual series of events occurred in the Circuit Court of the City of Roanoke which led to an unusual ruling. The case, Obrist v. Lantz, 73 Va. Cir. 80, is a reminder that trial tactics which harass, cause unnecessary delay or needlessly increase the cost of litigation will not be tolerated by the Court Virginia Code § 8.01-27.1. In this case, the plaintiff filed a Motion for Judgment alleging personal injury. At that time she also served an insurance carrier as an underinsured motorist coverage carrier. The carrier filed an answer to the complaint in its own name and, thereafter, participated in the defense of the case. *Three days* prior to trial, plaintiff's counsel noticed that the declaration page of the policy included the name of a company subsidiary and that it was the subsidiary that was the true UIM carrier and real party in interest. Neither counsel was aware of the identity of this proper party until that time, Obrist v. Lantz, 73 Va. Cir. 80. Herein lies the first lesson of this tale, always check the fine print and make sure that the correct party to the suit has been served before answering and submitting to the authority of the Court.

When the error was discovered, counsel for the parties contemplated two courses of action. The first was to contact the carrier to determine if it would provide coverage for its subsidiary and, if so, the case could proceed to the trial as scheduled. However, the three days remaining before trial were not a sufficient amount of time to obtain the appropriate corporate authority. Ibid. at p. 81 Plan B was to agree to a continuance until such time as the situation could be corrected. Both plaintiff and defense counsel agreed that this would be the proper judicial route to take, however, the UIM carrier refused to

agree to the continuance. Plaintiff's attorney was forced to file a Motion to Continue and schedule a hearing on the matter. Ibid at p. 81.

At the hearing the Court determined that there had been "an innocent and mutual misunderstanding between counsel and the parties" and that counsel on both sides had acted responsibly to try to resolve the matter without judicial intervention. Ibid at p. 81. Defense counsel had advised his client to agree to the continuance. However, the insurer insisted upon objecting to the continuance in an attempt to force the insured to "burn" her nonsuit. Ibid at p.82 "In this particular instance, counsel for the plaintiff made a reasonable request for continuance due to the fact that all lawyers and litigants innocently misunderstood whom the underinsured carrier was". Ibid at p. 82. However, counsel for the carrier had a mandatory duty to abide by the decision of his client and he "attempted to carry out his client's decision despite the fact that it conflicted with his advice and his intended action" Ibid at p. 83.

In his letter opinion, Judge Charles N. Dorsey imposed sanctions in the amount of $1,000.00 against the carrier for "putting the opposing party to the burden or preparing a motion, setting a hearing, and arguing for a continuance when there was no reasonable basis to oppose it." Ibid at pp.83-84[1] Not mentioned, but implied, is the fact that this unnecessary hearing also heedlessly misused the Court's time.

And so this cautionary tale is complete. Moral: If you play around with the judicial system, you may have to pay.

DECISIONS BY THE SUPREME COURT OF VIRGINIA REGARDING INSURANCE INDUSTRY ISSUES October 27 – 31, 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.

071894 **Fruiterman v. Granata** 10/31/2008
In separate wrongful birth cases filed by the mother and father of twin daughters afflicted with Down syndrome, the circuit court judgment sustaining a jury verdict in favor of the mother is reversed because the evidence was insufficient as a matter of law to prove the element of proximate causation. In the father's case, the circuit court granted a motion to strike the evidence because the father failed to prove the existence of a physician-patient relationship, and that judgment is affirmed.

[1] Also *Ford motor Co. v. Benitex, 273 Va 242*

072041 **Norfolk and Portsmouth Railroad v. Wilson** 10/31/2008
In the trial of a personal injury suit brought under the Federal Employers' Liability Act there was no error in challenged evidentiary rulings concerning expert qualification to testify about industry safety standards and dangerous conditions located other than where the plaintiff was injured, but the trial court erred in allowing into evidence proof of safety statutes from other jurisdictions which did not apply in this case and were prejudicial. Inapplicable statutes are inadmissible as proof of the standard of reasonable conduct in a negligence case. The judgment is affirmed in part, reversed in part, and the case is remanded

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