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# **FIVE SIGNIFICANT GENERAL LIABILITY N.C. COURT DECISIONS OF 2008**

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"IF AT FIRST YOU DON'T SUCCEED ...  
APPEAL TO A HIGHER COURT."

# **Blaylock Grading Company v. Smith,** **658 S.E.2d 680 (2008)**

- Defendant Engineer contracted with grading company for surveying services for a military housing site.
- “Engineer’s liability to the Grader for any and all injuries and damages arising out of this agreement shall not exceed the total amount of \$50,000.00 or the amount of Engineer’s fee, whichever is greater.”

Jury award: \$574,714.00 for the Engineer’s negligence and breach of contract.



# North Carolina Appellate Court: Reversed.

- A professional engineer/land surveyor may limit its liability when contracting with another party and the limitation of liability clause may be validly enforced.
- The Plaintiff and Defendant were sophisticated, professional parties who conducted business at arms' length.
- The contract and limitation provision does not elicit a profound sense of injustice and was not void as against public policy.



# Hinson v. Jarvis,

660 S.E. 2d 604 (2008)

- Plaintiffs were stopped at a traffic light when they were struck by a vehicle operated by Defendant Mr. Jarvis. Defendant Mrs. Jarvis was riding in the passenger seat next to her husband.
- Mr. Jarvis had suffered seizures in the past and his driver's license had not been renewed for that reason. Mrs. Jarvis was not comfortable with her husband operating a vehicle and had admonished him not to drive on previous occasions. In spite of her concerns, she continued to travel with her husband while he drove.
- Plaintiff sued both Mr. Jarvis, the driver of the vehicle, and Mrs. Jarvis, the passenger.

Trial court: Granted Summary Judgment in favor of Mrs. Jarvis.



# North Carolina Appellate Court: Affirmed.

- Mrs. Jarvis was complicit in her husband's breach of ordinary care but did not "incite" him to drive.
- She did not breach her duty of care to the Plaintiffs by knowingly riding in a vehicle with her husband with knowledge that he had suffered from seizures.
- By merely riding in the automobile, Mrs. Jarvis was not acting in a negligent fashion such that she could be a proximate cause of the accident involving Plaintiff.



# Andrus v. IQMax, Inc.,

660 S.E.2d 107 (2008)

- Plaintiff provided consulting services to the Defendant pursuant to a signed contract.
- In December, 2000, Plaintiff sent Defendant an invoice for services rendered through June, 2000, but the invoice remained unpaid.
- Several years later, e-mails from Defendant stated that he had the “wheels in motion” in paying Plaintiff, but that he was still working on the details. Subsequent e-mails addressed possible payment solutions over time and financing proposals of Defendant.

Trial court: Plaintiff barred by the three year statute of limitations.



# North Carolina Appellate Court: Affirmed.

- Plaintiff contended that the various e-mails between the parties constituted a new promise to pay which tolled the statute of limitations.
- The e-mails between Plaintiff and Defendant did not manifest a “definite and unqualified intention” to pay the debt owed to Plaintiff.
- The e-mails were conditional expressions of Defendant’s willingness to pay the Plaintiff, but were not statements sufficiently precise to amount to an unequivocal acknowledgement of the original amounts owed.



# Hines v. WalMart, 663 S.E.2d 337 (2008)

- Plaintiff received injuries from a slip and fall at the Defendant's store. Plaintiff testified that he slipped and fell on diced peaches.
- At the time of the incident, WalMart had a "zone defense" or "safety sweep" policy to keep the floors free of spills and debris.
- Jury verdict: Defense. Plaintiff moves for a new trial because the Defendant had produced no evidence that it complied with its "zone defense" policies. Motion granted.



# North Carolina Appellate Court: Reversed.

- The trial court improperly shifted the legal burden of proof to the Defendant.
- The Plaintiff has the burden of showing that Defendant either:
  - 1) negligently created the condition causing the injury, or
  - 2) negligently failed to correct the condition after actual or constructive knowledge of its existence.
- Trial court ruled that Defendant failed to produce evidence that it had complied with its safety sweep policies.
- Improper to require the Defendant to produce evidence that it had been acting in a non-negligent manner at the time of the Plaintiff's fall.



# Dailey v. Popma, 662 S.E.2d 12 (2008)

- Plaintiff, a North Carolina resident, sued the Defendant, a Georgia resident, for posting allegedly defamatory statements about the Plaintiff on an internet bulletin board discussion. In numerous internet postings over two months, Defendant accused Plaintiff of embezzlement, theft, cheating, dishonesty, fraud, and “being a scumbag.”
- The Complaint alleged North Carolina jurisdiction because the effect of the defamation occurred in North Carolina.

Trial court: Dismissal of action for lack of personal jurisdiction.



# North Carolina Appellate Court: Affirmed.

- “Dispositive issue” is whether the Defendant, through the internet postings, manifested an intent to target and focus on North Carolina readers.
- A person who simply places information on the internet does not subject himself to jurisdiction in each state into which the electronic signal is transmitted and received.
- The internet postings by Defendant did not target or focus on North Carolina readers and could have been read by anyone on the internet. No evidence that the Defendant posted the material on the internet bulletin boards with the intent to direct his content to a North Carolina audience.

