



CRAFILL SUMNER
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Recent Developments in CGL, Auto and Property Insurance Law: 2008

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CGL POLICY

- **Property Damage Requirement**
 - Breezewood of Wilmington Condo. Homeowner's Assn v. Amerisure Mutual Ins. Co., 2008 WL 859018 (E.D.N.C. 3/31/2008)
 - Amerisure Mut. Ins. Co. v. Superior Construction Corp., 2008 WL 3842958 (W.D.N.C. 8/15/2008)



Loss of Use as Property Damage

- Race City Corp. v. Selective Ins. Co., 2008 WL 2131174, (Unpublished) (Rhode Island law) (4th Cir. 5/21/2008)



Trigger of Coverage

- **Date of Faulty Construction Triggers Coverage**

- Auto-Owners Ins. Co. v. Northwestern Housing Enterprises, Inc., 2008 WL 901176 (W.D.N.C. 3/31/2008)





- **Single or Multiple Occurrence**

- Western World Ins. Co. v. Wilkie, 2007 WL 3256947 (E.D.N.C. 11/2/2007)





PERSONAL AND ADVERTISING INJURY

- **False Advertising/Disparagement
Coverage Found for Negative
Comparative Statements**

– Harleysville Mut. Ins. Co. v. Buzz Off Insect
Shield, L.L.C., -- N.C. App. --, 664 S.E.2d
317 (2008)





Additional Insured: General Contractor under Sub's Policy

- **“Arising Out of” Work of Subcontractor affords coverage to General Contractor under Endorsement**
 - Pulte Home Corp. v. American Southern Ins. Co., -- N.C. App. --, 647 S.E.2d 614 (2007)





EXCLUSIONS

- **Auto Exclusion**

- Stacy v. Merrill, 2008 WL 2415979 (N.C. App. 6/17/2008)





Police Protection Exclusion

- **Sheriff not providing protection to inmates**

– Myers v. Bryant, --N.C.App.--, 655 S.E.2d 882 (2008)



Owned Property Exclusion

- **Applies to General Contractor who Owned Property at time of Construction**
 - Auto-Owners Ins. Co. v. Northwestern Housing Enterprises, Inc., 2008 WL 901176 (W.D.N.C. 3/31/2008)
 - (Note: this result is minority view and concluded in *dictum*)





Professional Services Exclusion

- Found ambiguous re building inspector
 - Cowell v. Gaston County, -- N.C. App. --, 660 S.E.2d 915 (2008)
- Excluded damages “arising out of the rendering of or failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you or performing work on your behalf in such capacity.”





HOMEOWNER/PROPERTY POLICIES

- **Late Notice by insured – bad faith delay found**
 - Digh v. Nationwide Mut. Fire Ins. Co., -- N.C. App. --, 654 S.E.2d 37 (2007)





AUTO POLICIES

- **Use of Auto Requirement**

Pedestrian “using” auto:

- Integon Natl. Ins. Co. v. Ward ex rel. Perry,
184 N.C. App. 532, 646 S.E.2d 395 (2007)





- **UIM Policies**

- Hit-and-Run Coverage

- Moore v. Nationwide Mut. Ins. Co., 2008 WL 2415168 (N.C. App. 6/17/2008)

- Geico Ins. Co. v. Larson, 542 F.Supp.2d 441 (E.D.N.C. 2008)



Rate Bureau Form NC 01 87 (Ed. 06-04)

SELECTION/REJECTION FORM
UNINSURED MOTORISTS COVERAGE
COMBINED UNINSURED/UNDERINSURED MOTORISTS COVERAGE

Uninsured Motorists Coverage (UM) and Combined Uninsured/Underinsured Motorists Coverage (UM/UIM) and coverage options are available to me. I understand that:

1. the UM and UM/UIM limits shown for vehicles on this policy may not be added together to determine the total amount of coverage provided.
2. UM and UM/UIM bodily injury limits up to \$1,000,000 per person and \$1,000,000 per accident are available.
3. UM property damage limits up to the highest policy property damage liability limits are available. Coverage for property damage is applicable only to damages caused by uninsured motor vehicles.
4. my selection or rejection of coverage below will apply to any renewal, reinstatement, substitute, amended, altered, modified, transfer or replacement policy with this company, or affiliated company, unless a named insured makes a written request to the company to exercise a different option.
5. my selection or rejection of coverage below is valid and binding on all insureds and vehicles under the policy, unless a named insured makes a written request to the company to exercise a different option.

(CHOOSE ONLY ONE OF THE FOLLOWING)

I choose to reject Combined Uninsured/Underinsured Motorists Coverage and select Uninsured Motorists Coverage at limits of:

Bodily Injury _____; Property Damage _____

I choose Combined Uninsured/Underinsured Motorists Coverage at limits of:

Bodily Injury _____; Property Damage _____

I choose to reject both Uninsured and Combined Uninsured/Underinsured Motorists Coverages.

A Named _____ [Policy/
Insured _____ App. Number] _____

Signature _____ Agent _____

Date _____

NC 01 87
(Ed. 6-04)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-124
HOUSE BILL 738

AN ACT TO REQUIRE UNINSURED AND UNDERINSURED MOTORIST COVERAGE; MAKE TECHNICAL CHANGES TO INSURANCE FINANCIAL PROVISIONS; AMEND THE UNAUTHORIZED INSURER LAWS; MAKE TECHNICAL CHANGES TO THE RATE EVASION LAW TO CLARIFY THAT IT APPLIES ONLY TO PRIVATE PASSENGER VEHICLES AND TO ADD A TERMINATION RESTRICTION CONSISTENT WITH G.S. 58-37-50 TO CLARIFY THAT THE RATE EVASION LAW APPLIES TO CEDED AND UNCEDED POLICIES; REVISE MANAGED CARE AND HMO RECORD RETENTION LAWS; MAKE CHANGES TO THE HEALTH INSURANCE RISK POOL LAWS; STRENGTHEN PROFESSIONAL EMPLOYER ORGANIZATION PROTECTIONS; MAKE CHANGES TO THE LAW GOVERNING THE CODE OFFICIALS QUALIFICATION BOARD; PROHIBIT FREE INSURANCE; AND TO MAKE OTHER MISCELLANEOUS CHANGES.

The General Assembly of North Carolina enacts:

PART I. UNINSURED AND UNDERINSURED MOTORIST COVERAGE.

SECTION 1.1. G.S. 20-279.21(b)(3) and (b)(4) read as rewritten:

"(b) Such owner's policy of liability insurance:

...

- (3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars (\$1,000,000), as selected by the policy owner, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase uninsured motorist bodily injury coverage with greater limits, subject to the limitation that in no event shall uninsured motorist

bodily injury coverage limits exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. The insurer shall notify the named insured of his or her right to purchase uninsured motorist bodily injury coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section. The provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident ~~of up to~~ equal to the highest limits of property damage liability coverage for any one vehicle insured in the owner's policy of liability insurance, and subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. ~~The coverage required under this subdivision is not applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured in the policy does not reject uninsured motorist coverage and does not select different coverage limits, the amount of uninsured motorist coverage shall be equal to the highest limit of bodily injury and property damage liability coverage for any one vehicle in the policy. Once the option to reject the uninsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless the named insured makes a written request to exercise a different option. The selection or rejection of uninsured motorist coverage or the failure to select or reject by a named insured is valid and binding on all insureds and vehicles under the policy. Rejection of or selection of different coverage limits for uninsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by a named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.~~

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under

in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection."

SECTION 1.2. G.S. 20-279.21 is amended by adding the following new subsections to read:

"(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to the named insured, when the policy is issued and renewed, that the named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. An insurer shall be deemed to have given reasonable notice if it includes the following or substantially similar language on the policy's original and renewal declarations pages or in a separate notice accompanying the original and renewal declarations pages in at least 10 point type:

"NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND ONE MILLION DOLLARS (\$1,000,000) PER ACCIDENT. THIS INSURANCE

PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

(n) Nothing in this section shall be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than the insured has purchased from the insurer under this section.

(o) An insurer that fails to comply with subsection (m) of this section is subject to a civil penalty under G.S. 58-2-70."

PART II. INSURANCE COMPANY FINANCIAL SOLVENCY PROVISIONS.

SECTION 2.1. G.S. 58-5-50 reads as rewritten:

"§ 58-5-50. Deposits of foreign life insurance companies.

In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having that have a market value of four hundred thousand dollars (\$400,000) as a prerequisite of doing business in this State. All foreign life insurance companies shall deposit an additional two hundred thousand dollars (\$200,000) where such companies cannot show three years of net operational gains prior to admission, income before being licensed in this State."

SECTION 2.2. The catch line of G.S. 58-10-145 reads as rewritten:

"§ 58-10-145. Mono-line Monoline requirement for mortgage guaranty insurers."

SECTION 2.3. G.S. 58-7-15(17) reads as rewritten:

"(17) "Credit insurance," meaning indemnifying merchants or other persons extending credit against loss or damage resulting from the nonpayment of debts owed to them; and including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to the insurer or to any person so insured by the insurer; and also including insurance where the debt is secured by either (a) a junior lien on real estate or (b) where the debt is secured by a first lien on real estate as long as (i) the purpose of the debt being insured is not for the purchase of the real estate and the insurance is limited to twenty-five percent (25%) of the insurer's aggregate insured risk outstanding, before reinsurance ceded or assumed or (ii) the insurance is not included within the definition of mortgage guaranty insurance."

SECTION 2.4. G.S. 58-5-71 reads as rewritten:

"§ 58-5-71. Liens of policyholders; subordination.

Liens against the deposit of a foreign insurer under G.S. 58-5-70 shall be subordinated to the reasonable and necessary expenses of the Commissioner in liquidating the deposit and paying the special deposit claims. "Special deposit claims" has the same meaning set forth in G.S. 58-30-10(19)."

SECTION 2.5. G.S. 58-5-55 reads as rewritten:

Selection/Rejection UIM

- Hammond v. Wray, --N.C.App. --, 662 S.E.2d 579 (2008) (Unpublished)
 - Piles v. Allstate Ins. Co., --N.C.App. --, 653 S.E.2d 181, rev. denied, 2008 WL 2790329 (6/11/2008)



CLAIMS AGAINST AGENTS AND INSURERS

- **Prejudgment Interest Recoverable in Arbitration**
 - Sprake v. Leche, --N.C. App. --, 658 S.E.2d 490 (2008)





Claims Against Agent

- **No claim without “affirmative assurances” of coverage**
 - Carter v. West American Ins. Co., --N.C. App. --, 661 S.E.2d 264 (2008)





Material Misrepresentations by Insured

- **Credit and Insurance History material as a matter of law**
 - Luther v. Seawell, --N.C. App.--, 662 S.E.2d 1 (2008)





- **No Bad Faith Claim without Proximate Cause / Mold Limitation in Homeowner's Policy**

- Burrell v. Sparkles Reconstruction Co., Co., -- N.C. App. --, 657 S.E.2d 712 (2008).



2008

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