

# MJ *notes*

**WE HELP PEOPLE WITH THE FOLLOWING CLAIMS:**

- Personal Injury
- Wrongful Death
- Medical Malpractice
- Workers' Compensation
- Social Security Disability
- Nursing Home Negligence
- Inadequate Security
- Insurance Bad Faith
- Environmental Contamination
- Assisted Living Negligence
- Premises Liability
- Consumer Class Action
- Product Liability
- Pharmaceutical Claims
- Asbestos-Related Diseases
- Vehicle Accidents
- Construction Site Negligence
- Land Condemnation
- Stockbroker/Investment Fraud

## *Are You a Victim of Bad Investment Advice?*

By Nicholas D. Thomas

If you have lost a significant amount of your savings trusting the investment advice of a stockbroker, insurance salesperson, banker, or other financial advisor, there may be something you can do to recover your losses.

Under the law, stockbrokers have a duty to "know their customers," which means that they have to take the time to learn about your assets, your needs, your investment experience, and your willingness to accept the risks of the market. Based on that knowledge, stockbrokers have a duty to recommend only those investments that are "suitable" to you.

For example, if you are nearing retirement and looking to invest your savings to provide a long-term income, an investment in risky technology stocks would very likely be unsuitable to you. It may even be the case that it would be unsuitable for a broker to place more than a small percentage of your savings in the stock market at all.

Similarly, if a stockbroker advised you to invest your savings in a complicated insurance policy (often called a variable annuity) that exposed you to high fees

and denied you access to your money when you needed it, the law may well provide you with relief.

These are just two of many situations in which you may be entitled to get some of your money back.

Today, all customer agreements with stockbrokers contain binding arbitration clauses, which mean that if you do file a claim against your broker, you will not have the chance to have your case heard by a jury. The good news, however, is that an arbitration normally moves more quickly than a case in civil court, and there is no right for you or the broker to appeal. Typically in North Carolina, unless your case is settled (which happens around 70 percent of the time), your case will be argued before a panel of arbitrators approximately ten months after you file the suit.

While the lawyers for the stockbrokers fight hard to deny your claim, and it is not often that investors recover all their losses, the recoveries can be significant. And when it comes to recovering your lost savings, something is always better than nothing.

## *Martin & Jones Continues to Help Consumers*

Martin & Jones has associated with Nicholas D. Thomas, a Raleigh-based securities attorney with 16 years experience. Nick began his legal career serving as an attorney/advisor to the U.S. Securities & Exchange Commission in Washington, DC. Since 1993, Nick has worked in private practice representing individual investors against brokerage firms. He has filed more than 150 arbitration claims and served as lead counsel in more than 40 arbitration hearings.

Martin & Jones has filed claims against 30 of the 100 largest corporations in America. Nick's investment fraud expertise combined with the strength of Martin & Jones as a firm offers clients the level of dedication and experience necessary to pursue such legal claims.

If you have legal questions, call us at **800-662-1234**.



## Protect Your Identity

According to an FTC Study in 2003, economic losses as a result of identity theft were in excess of \$52 billion.

There are multiple ways for personal information to be compromised. Among them are criminals stealing mail, going through trash, fraudulent telemarketers and phishing scams (solicitations via computer from individuals pretending to be large reputable companies). Your personal information can also be compromised by anyone to whom you have provided it in the past.

The following are ways to minimize your potential exposure:

- Secure personal information in your home.
- Do not provide personal information over the phone or computer unless you initiate the contact.
- Place outgoing mail in blue Postal Service mailboxes.
- Use a shredder on all documents that have personal information and account numbers, as well as financial solicitations.
- Opt out of receiving financial solicitations by calling 1-888-5-OPTOUT.
- Monitor your financial records, including your credit report. Beginning September 2005, North Carolinians will be eligible to receive one free credit report annually.
- Do not carry your social security number with you.
- Request your employer and health insurance company remove your social security number from your paystub and insurance card.

In the event you discover your personal information has been used fraudulently or otherwise compromised, you should do the following immediately.

- Place a Fraud Alert on your credit file. This can be done by notifying any of the three major credit reporting agencies, which are, Equifax 1-800-525-6285, Experian 1-888-397-3742, TransUnion 1-800-680-7289.
- File a police report in your community as well as the community where the transactions took place. Keep a copy of this report in order to validate your claims to creditors and others.
- Notify your financial institution and close any compromised accounts.
- File a complaint with the FTC. The information provided to them is shared with law enforcement.
- Depending on the level of "victimization," enroll in a credit monitoring service.

Your personal information is most valuable to you, so take the proper steps to protect it. In the event it is compromised, contact the appropriate parties immediately. For additional information on identity theft, visit the Federal Trade Commission website at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or [www.ftc.gov](http://www.ftc.gov).

The Risk Management Group at Coastal Federal Credit Union wrote this article. Coastal Federal Credit Union is a not-for-profit, member owned financial cooperative, headquartered in Raleigh, NC. If you are interested in credit union membership or as a no cost benefit to your employees, please contact us at 1-800-868-4262 or [www.coastalfcu.org](http://www.coastalfcu.org).



## *Medical Malpractice Crisis? Tort Reform? Just the Facts, Please.*

by Bart Goodson

Fans of the old detective series *Dragnet* remember the show's star, Detective Friday, and his calm, cool demeanor. While those he was interviewing always seemed to get emotionally caught up in the moment, Detective Friday never lost his concentration. His refusal to get pulled to either side of an emotionally charged situation and remain calmly focused on "just the facts" always allowed him to get to the truth.

There seems to be a prevalence of sensationalism in journalism. The more panicked the cry, the better the headline. Sometimes the emotion of the story seems more important than whether the facts actually exist. Unfortunately, this leads many to substitute the emotion for the facts. Without the focus of someone like Detective Friday, it is easy to be swept towards one side of an issue based on emotions without first taking a hard look at the facts.

This is evident today in the stories of our national, state and local "healthcare crisis" and the need for "tort reform." News stories could lead even the most rational of individuals to believe that soon there will be no doctors left; that doctors are being driven towards the brink of bankruptcy by runaway juries, excessive trial verdicts, and insurance premiums that swallow their incomes; that trial lawyers, and trial lawyers alone, are to blame; and that nothing short of overhauling our civil justice system can stop the impending disaster.

Although the forces involved behind the recent rise in physicians' insurance premiums are too complex for Detective Friday to neatly wrap up in a single episode of *Dragnet*, a look at "just the facts" should make one question not only the driving force behind this "crisis," but also whether such a "crisis" really exists. A recent North Carolina Bar Association Tort Reform Task Force, composed of plaintiffs' and defense attorneys, attorneys who practice in areas of the law not associated with this ongoing debate, and academic professors, attempted such an examination.

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Task Force's findings indicate that:

- Frivolous medical malpractice lawsuits are not a significant problem in North Carolina.
- The physician population has been growing in North Carolina at a rate in excess of the population growth.
- There is no evidence that doctors are currently leaving our state in significant numbers.
- Medical malpractice lawsuits have not increased in number within the last five years, nor has the percentage of medical malpractice lawsuits resulting in payment by insurance companies.
- Caps on non-economic damages in medical malpractice cases, although enacted in many states, have done nothing to lower or reduce the escalation of medical malpractice insurance premiums.
- Medical malpractice insurance premium increases are due to many factors, some of which appear to be unrelated to medical malpractice litigation.

These findings are consistent with data compiled by the North Carolina Administrative Office of the Courts (AOC). In data collected since 1998, the AOC has found that 96 percent of all medical malpractice lawsuits filed in North Carolina resolve in some fashion, typically either by dismissal or settlement, without going to trial. Of the 99 medical malpractice cases that have gone to trial, only 21 resulted in a verdict for the patient. Of the 21 patient verdicts, the median jury verdict was \$300,000 and only three of the 21 patient verdicts were in excess of one million dollars.

Medical Mutual Insurance Company of North Carolina, a major malpractice insurer in this state, reported a 41.6 percent jump in net income for 2004, \$6.8 million compared to \$4.8 million for 2003! Medical mutual says it paid 97 malpractice claims during the year, with an average claim payment of \$328,000, compared to 82 claims and an average payout of \$364,000 in 2003.

Do the facts support a crisis? Does there appear to be a need for tort reform? The next time you hear a friend, coworker, newscaster, or politician attempting to spread panic about the end of healthcare without tort reform, put on your Detective Friday cap and calmly ask to see "just the facts" behind the panicked cry for change. Ask hard questions and demand answers supported by facts.

#### OTHER OFFICES:

3100 TOWER BLVD., SUITE 526  
DURHAM, NC 27707  
919-544-3000

1213 CULBRETH DR, SUITE 121  
WILMINGTON, NC 28405  
910-256-9640

3340 PEACHTREE RD., SUITE 325  
ALTANTA, GA 30326  
404-257-1117

## Protect Yourself With Proper Insurance

By Sean Cole

How much insurance coverage do you have on your automobile? Many people answer "plenty," "whatever I had to have," or "full coverage." Unfortunately for those folks, they often learn that they do not, in fact, have nearly enough coverage, much less than "plenty."

State law establishes minimum limits for automobile insurance. In North Carolina, limits are set at \$30,000 for a personal liability automobile policy. If you did not request more coverage when you bought your policy, you may have only \$30,000 of protection. That amount covers personal injuries to someone else. A separate policy limit of \$15,000 is available to cover damage to property.

You may have seen your coverage expressed as \$30,000/\$60,000 or 30/60. This means that, in the event that you cause a collision or injure someone else, your policy will pay up to 30,000 per person and up to \$60,000 per incident. While exact statistics are not available, our firm's experience suggests that more than 90 percent of licensed drivers have only minimum coverage.

Liability coverage protects you when you are in a collision that is your fault. If you're not paying attention and run a red light, then your liability policy is responsible for paying for the damages if you injure someone or their property. If someone isn't permanently injured, and has perhaps three or four thousand dollars worth of medical bills, then \$30,000 worth of coverage should fully protect you. However, what if you run a red light and hit a school bus with 20 students? What if there is only one person in the car, but that person is a surgeon who makes thousands of dollars each week, and has to miss three months of work to complete rehabilitation and therapy? Suddenly, \$30,000 becomes a much smaller number. As a general rule, injured parties in a collision are entitled to collect medical expenses, lost wages, and compensation for pain and suffering.

If you have only \$30,000 in liability coverage, but have other assets, you could easily find yourself personally liable for the remaining damages. Just how large that amount is depends on how bad the damages are. Liability coverage, therefore, is critically important to protect yourself, your assets and your lifestyle.

Perhaps even more important is the second function of your automobile insurance policy, which is a function many people never consider — uninsured and underinsured motorist coverage (often referred to as UM/UIM.) These two types of coverage are just what they sound like. Uninsured functions when another person injures you in a collision but has no insurance at all. Underinsured provides additional coverage to you when the person who hurts you has insufficient coverage.

Many ask, "Why have insurance at all if nobody else is going to carry it?" Purchasing thorough insurance coverage protects you, and doesn't leave that decision up to some random driver who may not even have a license, is out joyriding, runs a light, and crashes into your car. Making sure that your insurance coverage is sufficient is one of the easiest ways to protect yourself and your family from catastrophe.

The best way to make sure you have the correct coverage in the amounts you need and want is to carefully review you policy, and contact your agent or your insurance company for a complete review of your coverage amounts. Ask the person you're talking with to send you a letter confirming the details of your conversation and you coverage limits.

Insurance exists to protect people. Take this opportunity to protect you and your family. If you have questions about your coverage, call us or visit our website.



## What Is Involved In a Claim Against a Drug Company?

By Coleman M. Cowan

Prescription drugs are designed to have certain medical benefits. Consumers rely on drug companies to provide adequate warnings about their safe use. Ideally, drug companies provide adequate warnings to the doctors who prescribe them, and those warnings are then communicated to the patient. In a perfect world, each patient receives adequate information concerning the risks and benefits, so that the decision to take the drug to treat a particular condition is an informed decision.

Effective warnings are not always produced by drug companies and communicated to physicians and patients. In certain situations, patients experience adverse side effects of prescription medications of which they were not warned. In such situations, manufacturers are often held accountable for not providing complete and accurate information about a medication.

Not every adverse effect experienced from taking a pharmaceutical drug supports a legal claim. There must be evidence that the drug company failed to warn of a serious side effect of which they knew or should have known. This information generally comes from two sources – internal company documents and articles or studies from the medical community. In addition, there must be evidence that the risks of taking the medication are not outweighed by the benefits. In other words, in situations in which no warnings were provided with a drug, the patient would not have taken the drug had he or she known of the true risks and nature of the side effects.

Even though all prescription drugs can cause negative side effects, not every injury caused by taking a drug supports a legal claim. There must be evidence of a failure to warn, and in addition, that the injury suffered was caused by that failure to warn.

The investigation process is very detailed, and for that reason, takes some time to complete. The typical investigation process will last several months. If there is a legal claim to pursue, that process also takes some time because of the complexities involved in pursuing pharmaceutical drug cases. In each, there are fact witnesses, company officials and expert witnesses who must be questioned as well as medical records to be reviewed. Drug companies vigorously defend pharmaceutical cases. Typically, it takes one to two years, if not longer, before a case is ready for trial.

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TRIAL LAWYERS

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410 GLENWOOD AVE.  
SUITE 200  
RALEIGH, NC 27603  
919-821-0005

Thomas E. Barwick  
Katherine N. Bricio  
Sean A.B. Cole  
Coleman M. Cowan  
Julia Ellen Dixon  
Scott Bartley Goodson  
H. Forest Horne, Jr.  
John Alan Jones  
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