From The Bench

legal news of interest

JUNE 2002

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Recent Decisions in Medical Malpractice, Auto Liability and CGL Coverage

by Matthew D. McConnell

Medical Malpractice

In ***Reed v. St. Charles General Hospital***,[1] Joe Reed allegedly contracted AIDS from a blood transfusion he received while he was a patient at St. Charles General Hospital. Dorothy Reed, his wife, discovered she was infected with AIDS a few years later and both filed suit against the hospital. Following the death of both Joe and Dorothy, the Reeds' children pursued the claims against the hospital and other defendants.

The district court found Dorothy Reed's claims were not covered by the **Louisiana Medical Malpractice Act**.[2] The Court of Appeal agreed, pointing out the act defines "malpractice" as an unintentional tort or breach of contract based on health care or professional services rendered or which should have been rendered by a health care provider to a patient and includes all legal responsibility of a health care provider arising from defects in blood used in a patient.[3] The act defines a "patient" as a person who receives or should have received health care from a health care provider.[4]

Because Mrs. Reed did not receive health care from St. Charles General, she was not a "patient" as defined in the act. Rather, she died from injuries received as a result of health care rendered to her husband and not direct health care afforded to her. Accordingly, Mrs. Reed's claims did not fall under the **Medical Malpractice Act.**

Q. When a plaintiff claims personal injury resulting from health care rendered to plaintiff's spouse, are plaintiff's claims subject to the provisions of the Medical Malpractice Act?

a. No.

Auto Liability

In ***Racine v. Moon's Towing***,[5] a parked pick-up truck with keys in its ignition was deemed not to be an unreasonably dangerous condition as a matter of law. The Louisiana Supreme Court found the defendant owner was entitled to summary judgment.

This case arose out of the death of fifteen-year old Hunter Racine. Hunter, his brother, and two friends trespassed on the defendant's industrial property where they discovered a parked flatbed truck. The truck was locked with the keys in the ignition. One of the boys climbed through the window and started the truck but was unable to turn it off. While Hunter stood on the truck's running board and reached into the truck to try to shut off the engine, it jumped into gear, rolled forward and pinned him between the moving truck and a fence.

The Louisiana Supreme Court held the mere act of leaving keys in a vehicle does not make the owner of the vehicle liable for injuries caused by someone who uses that vehicle without authorization. Likewise, parking a mechanically defective

vehicle on a person's private property does not constitute negligence. The Supreme Court found no legal basis for liability on the part of the defendants.

CGL Coverage

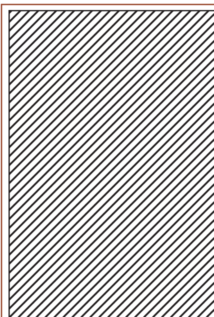
In ***North American Capacity Ins. Co. v. Brister's Thunder Karts, Inc.***,[6] the United States Fifth Circuit Court of Appeals determined North American Capacity Insurance Company waived its coverage defenses.

North American issued a *claims made* CGL policy to Brister's with a term from October 1995 to October 1996. Brister's prematurely cancelled the policy in July 1996. Brister's was served with and received notice of the lawsuit at issue on August 19, 1997. Brister's sent the petition to its insurance broker the next day. A few days after receiving the loss notice from the broker, North American appointed counsel to defend Brister's. North American defended the suit for three years before denying coverage for the first time. It never obtained a nonwaiver agreement reserving its rights to deny coverage.

As a result of the actions of North American, the court held North American had waived any coverage defenses it had under the policy.

Great American Insurance Company had a *claims made* policy which was in effect at the time the claim was made. However, it contained an escape clause which denied coverage to an insured who was covered by the terms of another insurance policy. The court found the North American policy to be "other insurance available to the insured" because North American insured Brister's and waived its coverage defenses.

1 2001-1148 (La. App. 4 Cir. 3/27/02) 2002 WL 977465.
2 *LSA–R.S. 40:1299.41*.
3 *LSA–R.S. 40:1299.41(A)(8)*.
4 *LSA–R.S. 40:1299.41*.(3).
5 01-2837 (La. 05/14/02) 2002 WL 984314.
6 287 F.3d 412 (5 Cir. 4/11/02).



Matthew D. McConnell graduated from the University of the South in 1992 where he obtained a Bachelor of Arts degree in Modern European History. He is a 1996 graduate of Tulane Law School. Matt's practice includes the defense of motor vehicle, admiralty/maritime, employment discrimination, and general casualty claims. He also has experience in non-profit/ religious corporate and private school counseling. If you have any questions about the topics addressed in this newsletter, contact Matt at 337-237-4070 or mcconnell@brineyforet.com.

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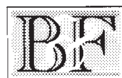

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