LAWYERS MUTUAL | LIABILITY INSURANCE COMPANY OF NORTH CAROLINA

ALERT

August 23, 2011

The Rules, They Are A-Changin'

By Mark Scruggs

The 2011 legislative session saw major changes to how plaintiff's personal injury lawyers will do business in the future.

One of the changes relates to evidence of medical expenses in a civil action. House Bill 542 added a new rule of evidence: Rule 414. New Rule 414 limits evidence offered to prove past medical expenses to evidence of the amounts actually paid to satisfy the bills. With regard to unpaid medical bills, the evidence is limited to amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied. This change in the law will obviously diminish the amount of medical expenses that can be put into evidence in the typical personal injury case and may have the effect of decreasing the potential jury verdict. House Bill 542 made this change in the law apply to actions commenced on or after October 1, 2011. One could certainly envision a mad rush to the courthouse to get personal injury actions filed before October 1.

At the urging of the North Carolina Advocates for Justice (NCAJ), the legislature passed Senate Bill 586 which re-writes Section 4.2 of Senate Bill 542 to make this change in the law apply to actions arising on or after October 1, 2011. So it appears the race to the courthouse has been averted, at least with respect to this change in the law.

Not so with the next change that applies to medical malpractice actions. Section 7 of Senate Bill 33 amends N.C.G.S. § 90-21.19 and limits an award of noneconomic damages to $500,000 unless the jury finds: (1) the plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death and (2) the defendant's acts or failures, which are the proximate cause of the plaintiff's injuries, were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional or with malice. This provision applies to actions commenced on or after October 1, 2011, so presently if one has a medical malpractice case with the potential for significant noneconomic damages; one might want to file the lawsuit before October 1. If that is not likely or not possible, the lawyer should advise the potential client in writing that her case may be affected by the new statute and it is unlikely that the firm will be able to have the case reviewed and filed by the October 1 deadline. As a consequence, the client's claim may be subject to the cap on noneconomic damages. If the client still wants you to handle her case, get her to signify in writing that she understands and accepts the probability that her case may not be filed before October 1, 2011 and as a result will be subject to the cap on noneconomic damages.

Todd Barlow, the NCAJ Political Affairs Counsel, advises that efforts are underway to ask the legislature to revise this provision so that it applies to causes of actions arising on or after October 1, 2011, which would seem to be a more efficient way to implement this change in the law and would avoid a rush to the courthouse to get medical malpractice lawsuits filed before October 1.

5020 Weston Parkway, Suite 200, Cary, North Carolina 27513
Post Office Box 1929, Cary, North Carolina 27512-1929
919.677.8900 TEL 800.662.8843 TOLL FREE
919.677.9641 FAX www.lawyersmutualnc.com