

**2017 INSURANCE LAW SECTION ANNUAL MEETING JOINT WITH THE
LITIGATION SECTION
April 7, 2017 – NC Bar Center – Cary, NC**

Table of Contents

**I. ETHICAL ISSUES WHEN REPRESENTING MINORS AND
INCOMPETENT PERSONS**

William S. Mills – Durham

BACKGROUND INFORMATION	I-1
The Courts Will Protect the Rights of Minors and Incompetent Persons	I-1
Minors and Incompetent Persons Must Prosecute or Defend a Civil Case Through a Personal Representative.....	I-2
ETHICAL ISSUES ARISING FROM THE REPRESENTATION OF A MINOR OR AN INCOMPETENT PERSON	I-5
Attorney-Client Relationship	I-5
Deciding Whether to Use a Parent as Guardian Ad Litem	I-6
Communications with Minors and Guardians	I-10
Representing an Incompetent Adult Who Has Not Been Adjudicated Incompetent.....	I-10
Determining Whether a Minor is Competent to Testify	I-11
SETTLEMENT OF CLAIMS INVOLVING MINORS AND INCOMPETENT PERSONS.....	I-12
Factors to be Considered When Approving a Settlement and the Payment of Attorneys’ Fees.....	I-12
Procedure for Obtaining Court Approval	I-13
Distribution of Settlement Funds to Minor or Incompetent Person.....	I-15
Sealing a Settlement.....	I-16
APPENDIX LIST	I-18
APPENDICES	I-19

II. NEW LAW IN UM/UIM COVERAGE

J. Bruce Hoof – Durham
Ellen P. Wortman - Wilmington

INTRODUCTION	II-1
FACTUAL BACKGROUND.....	II-2
THE MOTION.....	II-5
HARMONIZING NCGS§97-10.2 AND 20-279.21[e]: <i>AUSTIN V. MIDGETT (II)</i>	II-11
EXHIBITS	II-13

III. LITIGATION MANAGEMENT AND E-DISCOVERY IN INSURANCE
LITIGATION

Sonny S. Haynes – Winston-Salem
Brady A. Yntema - Greensboro

INTRODUCTION	III-1
SPOILIATION IN THE ERA OF TECHNOLOGY	III-2
DEVELOPING SOUND DOCUMENT RETENTION POLICIES	III-3
IMPLEMENTING LITIGATION HOLDS	III-5
THE ANATOMY OF A LITIGATION HOLD LETTER	III-7
SAFEGUARDING ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT PROTECTION	III-8
DEFENDING AGAINST A SPOILIATION MOTION.....	III-10
THE NEW NORMAL UNDER RULE 37(e) OF THE FEDERAL RULES OF CIVIL PROCEDURE.....	III-14
CONCLUSION.....	III-19

IV. USING EXPERT WITNESSES EFFECTIVELY

John A. Chilson – Durham
Mark A. Finkelstein -

INTRODUCTION	IV-1
LOCATING EXPERTS AND FINDING OUT ABOUT THEM	IV-1
THE SOURCES FOR EXPERTS.....	IV-2
Library Websites and Online Catalogues	IV-2
Medical Websites.....	IV-3
Bookstore Websites	IV-3
Websites Specifically for Articles	IV-4
USING VARIOUS SEARCH ENGINES TO TRACK DOWN EXPERTS	IV-4
Basic Search Engines.....	IV-4
Product Searches.....	IV-5
Expert Witness Referral Companies.....	IV-5
Expert Witness Directories	IV-5
Verdict Reports	IV-6
The Invisible Web.....	IV-7
USING YOUR NETWORK AND YOUR CLIENT’S NETWORK TO FIND PERSUASIVE EXPERTS.....	IV-8
EVALUATING THE EXPERTS	IV-8
Finding Out About Claimed Credentials	IV-9
The Expert’s Website.....	IV-10
Old Resumes	IV-10
Social Networking Sites.....	IV-11
Other Sources to Verify Credentials.....	IV-11
Transcripts of Testimony	IV-12
PERSUASIVE USE OF EXPERTS BEFORE TRIAL.....	IV-12
A FEW IDEAS ABOUT HANDLING EXPERTS	IV-13
YOUR EXPERTS.....	IV-13
Involve the Key Experts Early.....	IV-13

The Compensation Issue	IV-13
Use the Expert to Develop and Present Effective Evidence	IV-14
DEALING WITH OPPOSING EXPERTS	IV-14
Depositions	IV-14
Cross-Examination of Experts at Trial	IV-15
CONCLUSION.....	IV-17

V. ETHICS IN LITIGATION

Jennifer A. Porter – Raleigh

SUMMARY	V-1
THE TRIPARTITE RELATIONSHIP	V-1
Joint Representation of Insurance Company and Insured.....	V-1
When Differences Arise.....	V-1
When Insured Cannot Be Located	V-3
NEW TECHNOLOGIES – SAME RULES	V-4
Competence.....	V-4
Diligence	V-4
No Obstruction or Spoilage of Evidence	V-4
No Deception	V-5
No Communication with Represented Party Concerning the Representation.....	V-5
Judges / Jurors.....	V-6
Communications by Attorney / Advertising.....	V-7
Resources	V-7
JUST WORDS? HOW FAR IS TOO FAR	V-9
The North Carolina State Bar v. Tracey Cline.....	V-9
The North Carolina State Bar v. David Sutton	V-9
Rules and Comments	V-10
ATTACHMENTS.....	V-13

VI. THE TEN MOST SIGNIFICANT INSURANCE COVERAGE
DECISIONS OF 2016

L. D. Simmons and Lowndes Quinlan – Charlotte

COVER PAGE.....	VI-1
WESTFIELD INS. CO. v. NAUTILUS INS. CO.	VI-3
Facts	VI-3
Holding	VI-4
Observations	VI-5
WOODSON v. ALLSTATE INS. CO.....	VI-6
Facts	VI-6
Holding	VI-7
Observations	VI-8
COLONY TIRE CORP. v. FED. INS. CO.	VI-8
Facts	VI-8
Holding	VI-9
Observations	VI-11

CONT’L CAS. CO. v. AMERISURE INS. CO.	VI-11
Facts	VI-12
Holding	VI-12
Observations	VI-14
PETROTERMINAL DE PANAMA, S.A. v. HOUSTON CAS. CO.....	VI-14
Facts	VI-14
Holding	VI-15
Observations	VI-16
J&C MOODIE PROPERTIES, LLC v. DECK	VI-16
Facts	VI-16
Observations	VI-18
BAMFORD, INC. v. REGENT INSURANCE CO.....	VI-18
Facts	VI-19
Holding	VI-20
Observations	VI-21
THE TRAVELERS INDEM. CO. OF AMERICA v. PORTAL HEALTHCARE SOLUTIONS.....	VI-22
Facts	VI-22
Holding	VI-22
Observations	VI-23
SOUTHERN CLEANING SERVICE, INC. v. ESSEX INSURANCE COMPANY.....	VI-24
Facts	VI-24
Holding	VI-25
Observations	VI-26
STRYKER CORP. v. NATIONAL UNION FIRE INS. CO. OF PITTSBURGH.....	VI-27
Facts	VI-27
Holding	VI-28
Observations	VI-29

VII. CLAIMS-MADE POLICIES: KNOW THE PITFALLS

Josephine H. Hicks – Charlotte

INTRODUCTION	VII-1
Claims-Made vs. Occurrence Coverage	VII-2
KEY ISSUES IN CLAIMS-MADE COVERAGE.....	VII-6
Wrongful Acts.....	VII-7
What is a Claim.....	VII-8
What is Effective Notice.....	VII-10
Run-off Period	VII-11
Discovery Period.....	VII-11
Notice of Claim.....	VII-13
Notice of Circumstances.....	VII-14
Interrelated Acts Exclusion.....	VII-14
Interrelated Act Defined	VII-15
Coverage for Pre-Tender Defense Costs.....	VII-15
HYPOTHETICAL	VII-17