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NORTH CAROLINA LAWYERS WEEKLY > VERDICTS & SETTLEMENTS > ESTATE OF MAN HIT BY ROBBERY SUSPECTS GETS \$750K UM CLAIM

Estate of man hit by robbery suspects gets \$750K UM claim

On Sept. 22, 2006, three teenagers were attempting to steal money from an ATM machine in Charlotte. Police were dispatched to the scene in response to a 911 call.

When the police arrived, the suspects jumped into a stolen 1995 Dodge mini-van and attempted to flee the scene.

They threw the van into reverse and drove backwards out of the parking lot, backing into oncoming traffic and broadsiding a truck being driven by the decedent.

The impact flipped the decedent's truck, causing him to suffer fatal injuries.

Since the van was stolen, there was no liability insurance available. The estate filed an uninsured motorist claim with the decedent's insurance company.

At the time of his death, the decedent was 53 years old and survived by two adult children.

The estate's expert economist determined that the present value of the pecuniary loss was \$723,059. However, issues were raised as to how much the decedent's adult children would have benefited from their father's earnings. There were no medical bills, and the decedent's funeral expenses were \$3,847. Coverage for punitive damages was excluded from the applicable UM policy.

Type of action: Uninsured motorist claim

Injuries alleged: Death

Case name: Barnette v. Smith

County: Mecklenburg

Verdict or settlement: Settlement

Settlement date: July 2007

Amount: \$750,000

Special damages: \$3,847 (funeral expenses)

Plaintiff's experts: Ward Zimmerman, Ph.D.(economist)

Insurer: The Hartford

Plaintiff's attorney: John M. McCabe and Brian F. Davis of Davis & McCabe, P.A., Raleigh; Brian T. Bain of The Bain Group, PLLC, Charlotte

Submitted by: John M. McCabe



By
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- Criminal Practice – Abusive Boyfriend Convicted of Murder One**
 : The 4th Circuit affirms defendant's first-degree murder in the fatal shooting of his ex-girlfriend after a day of fishing and a fish fry on the reservation of the Eastern Band of Cherokee Indians; the trial court properly admitted evidence of defendant's prior violent acts and death threats against the victim, and



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defendant "invited error" by refusing to allow a jury instruction on a lesser-included offense.

2. Administrative – Black Lung – Evidence – Disability – Rebuttal

Mingo Logan Coal Co. v. Owens An administrative law judge did not improperly limit a coal mining company's ability to rebut a presumption of black lung benefits for a claimant who had spent at least 15 years in an underground mine and had become totally disabled from breathing difficulties, and the 4th Circuit affirms the award of benefits.

3. Administrative – 'Market Rate' Debate in Black Lung Fee Award

Eastern Associated Coal Corp. v. Director, OWCP In this black lung benefits case, claimant's lawyers had sufficient market-based evidence to support their hourly rates of \$175 to \$300 and their quarter-hour billing did not lead to billing excessive hours, but the 4th Circuit said the record did not support some fees for legal assistants; the court affirms the award of over \$32,000.

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