

LaCount v. General Casualty Company:  
**The Wisconsin Supreme Court Decides that  
"Six of One Really is One-Half Dozen  
(and Not a Dozen) of the Other"**

by Jodi Yin

Just two months ago, the Wisconsin Supreme Court issued its decision in LaCount v. General Casualty Company (2006 WI 14), and held that insurance companies are not required by state law to provide separate policy limits for a minor driver and her insured adult sponsor. With this decision, the Wisconsin Supreme Court drastically limited the potential exposure of automobile insurers across the state and the increase in insurance premiums that was certain to follow.

The facts in LaCount are typical of many automobile accident cases involving injuries to multiple parties. Daniel LaCount was injured in a car accident in 1999 while riding as a passenger in an automobile driven by a minor. The accident also resulted in the death of a 45-year-old man and injury to six passengers in his vehicle. Both LaCount and the family of the 45-year-old man filed suit.

As required by state law, the minor driver had an adult "sponsor" who signed her driver's license application. By signing the application, the sponsor became liable for any negligence on the part of the minor driver in operating a motor vehicle. In this case, the minor's sponsor was her father, who was the named insured on the policy that covered the automobile she was driving at the time of the accident. The minor driver was named as a family member in the policy, and she was a permissive user of the vehicle. The insurance policy covered both the minor driver and her sponsor, with a per accident policy limit of \$500,000.

The central issue in LaCount was whether General Casualty was required to provide the minor driver with this liability limit of \$500,000 and provide her sponsor with a liability limit of \$500,000--for a total limit on liability of \$1 million--or whether the insurer was obligated to provide a total liability limit for both of \$500,000. Like many automobile insurance policies in Wisconsin, the policy in this case promised to pay bodily injury damages for which "any insured becomes legally responsible because of an auto accident." In addition, the policy explicitly limited General Casualty's total liability for one occurrence to \$500,000, regardless of the number of insureds, claims made, or vehicles listed in the policy.

The circuit court interpreted this language as requiring the insurer to pay the \$500,000 policy limit twice--once to cover the minor driver who was negligent and once to cover her sponsor who was liable for imputed negligence. General Casualty appealed. The court of appeals reversed the judgment of the circuit court, finding that General Casualty's \$500,000 policy limit was its total liability for both the sponsor and the minor driver. As long as the sponsor's liability is not based on a separate negligent act, the court of appeals concluded that the sponsor and minor driver share a single limit.

The Wisconsin Supreme Court affirmed the decision of the court of appeals. In doing so, it adopted the reasoning of Folkman v. Quamme (2003 WI 116), in distinguishing between an insured's active negligence and an insured's imputed negligence. In cases where the negligence of a permissive minor driver is imputed to the sponsor, the court held that state law does not require an insurer to extend policy-limits protection to both



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because "a single liability is shared" by them. Applying this rule to the case, the court concluded that the sponsor in LaCount shared a single liability with the negligent minor driver. Consequently, General Casualty was obligated to provide a total liability limit of \$500,000.

The Wisconsin Supreme Court's decision in LaCount has far-reaching implications for Wisconsin's automobile insurance industry, as well as those involved in automobile accidents with a negligent minor driver in the state. In cases where an adult sponsor is not actively negligent, this decision limits an insurer's potential liability.

## **Recent Wisconsin Appellate Decisions**

**by Lori M. Lubinsky**

**Contractual Waiver.** Contractual waiver of subrogation claims agreed upon by two sophisticated commercial entities is enforceable. Factory Mut. Ins. Co. v. Citizens Ins. Co. of Am. (Ct. App. Dec. 14, 2005).

**UIM Coverage.** UIM insurer may reduce from its UIM coverage amounts received by two tortfeasors, one whose insurer paid its limits, and a second whose insurer paid less than its limits. Marotz v. Hallman (Ct. App. Dec. 22, 2005).

**Medical Malpractice; Statute of Limitation.** There is no statute of limitations for a claim

against a healthcare provider alleging injury to a developmentally disabled child. Haferman v. St. Clare Healthcare Fund, Inc. (Dec. 30, 2005). **Economic Loss Doctrine.** Economic loss doctrine does not bar suit between two contractors on same construction project who were not in contractual privity. Trinity Lutheran Church v. Dorschner Excavating, Inc. (Ct. App. Jan. 12, 2006.)

**"Other Insurance" Clauses.** In dispute between two UIM carriers, one insurer's "other insurance" clause is unenforceable because it fails to provide as much coverage to occupants of vehicle as the named insured, as required by sec. 632.32(3)(a), Stats. Progressive N. Ins. Co. v. Hall (Feb. 7, 2006).

**Juror Misconduct.** New trial in medical malpractice action was warranted based on jurors' reading during deliberations of dictionary definition of negligence during that differed from definition in jury instruction. Manke v. Physicians Ins. Co. of WI, Inc. (Ct. App. Feb. 9, 2006).

**Negligence; Dangerous Products.** Vendor and provider of hot beverages has no duty to warn users of the dangers of hot water dispenser because dangers were open and obvious; public policy considerations precluded liability against provider of hot water dispenser for alleged failure to provide lids. Kessel v. Stansfield Vending, Inc. (Ct. App. Mar. 16, 2006.)

**Default Judgment.** In denying motion for default judgment, trial court erroneously exer-

cised its discretion by failing to apply the required reasonably prudent persons standard, instead focusing on the prompt action to remedy the default. Mohns, Inc. v. TCS Nat'l Bank. (Ct. App. Mar. 28, 2006).

**UIM Coverage:** If an umbrella policy does not include UIM coverage automatically, but such coverage is available, an insurer must provide written notice of the availability of the UIM coverage, including a brief description of such coverage. Rebernick v. Wausau Gen. Ins. Co., (Mar. 30, 2006).

**Motor Vehicle Handler: Prohibited Exclusions:** Sec. 632.32(6)(a), Stats., which states "[n]o policy issued to a motor vehicle handler may exclude coverage upon any of its officers, agents or employees when any of them are using motor vehicles owned by customers doing business with the motor vehicle handler," applies to CGL and commercial umbrella policies that provide automobile liability coverage. Rocker v. USAA Cas. Ins. Co., (Mar. 30, 2006).

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