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**MEMORANDUM**

To: Delaware Claims Association  
From: Sean A. Dolan, Esquire  
Date: May 5, 2009  
Re: Case Law Update

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**SUPERIOR COURT GRANTS SUMMARY  
JUDGMENT TO INSURER IN CONNECTION  
WITH CLAIM FOR UM BENEFITS**

**Hanzer v. Wilkinson, et al.**, Del. Super.,  
C.A. No. 07C-10-207 JAP (April 22, 2009)

This was the plaintiff's claim for uninsured motorist benefits against defendant American Independent Insurance Company. The plaintiff was involved in an accident with an uninsured tortfeasor. However, when the plaintiff purchased her insurance coverage from the defendant, she had waived uninsured motorist coverage. Her claim in this action was that the offer made by American Independent was not meaningful and she did not understand it. Specifically, she argued that the cost of the additional coverage was not set out by the insurance company, and thus her rejection of it should not be given effect.

The Superior Court reviewed the prior case law, noting that some decisions required the carrier to explain in writing the cost of this supplemental coverage. However, those

cases dealt with underinsured coverage under 18 Del. C. Section 3902(b), whereas this claim was for uninsured coverage under 3902(a). The Court said there was no case law or legislative requirement that this additional information be supplied in the context of an offer for uninsured coverage, as opposed to underinsured coverage. Thus, the insurance company's Motion for Summary Judgment was granted.

**SUPERIOR COURT AFFIRMS \$10.00  
JURY VERDICT**

**Summerhill v. Iannarella, et al., Del.**  
Super., C. A. No. 07C-11-071 PLA (April 7,  
2009)

This was an action for personal injuries stemming from a car accident. There was no liability issue, but there was disagreement as to causation and damages. After a one day jury trial, the jury returned a verdict in favor of the plaintiff and awarded \$10.00 in damages. The plaintiff filed a Motion to Amend the Judgment, which was the functional equivalent of a Motion for Additur.

The Court refused to change the award, noting that there was ample reason for the jury to disbelieve the plaintiff's subjective complaints of pain. Plaintiff's counsel argued that the \$10.00 verdict was the "functional equivalent" of a zero verdict, and since there was an admission that the verdict could not be zero, additur was appropriate. The Court disagreed, noting that this would result in impermissible speculation as to what other verdicts might constitute the "functional equivalent" of a zero verdict. As such, the Court let the verdict stand.