

Beware of Things That Go Bump in the Night



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Practice Areas:

- Insurance Coverage
- Commercial Transportation
- Professional Liability

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It is almost Halloween, and chances are your neighborhood will be full of trick-or-treaters going door-to-door filling up their bags with treats of all kinds. Unfortunately, Halloween also is the night for tricks. One particular trick made it all the way to the West Virginia Supreme Court this year in *Richard E. Lemaster vs. GEICO General Insurance Company*.

It was late on Halloween. Richard Lemaster was driving his car down Highway 81 in Berkeley County, West Virginia. As he passed under a bridge, he heard something go bump. He pulled over and took a look around but saw nothing (and no one) near the overpass bridge. However, when he looked at his car, it was covered with...pumpkin. Apparently, someone had tossed a pumpkin over the side of the overpass. It landed squarely on Lemaster's roof, denting the area just above the windshield.

The police had no suspects at the time, so Lemaster filed an uninsured motorist claim with his auto insurance company, GEICO. GEICO denied the claim, so Lemaster filed a declaratory judgment action to ask the court to determine if GEICO had uninsured motorist coverage in this strange case. The court granted summary judgment for GEICO, ruling that according to Virginia law (the state where the policy was issued), in order for an injury to arise from a "use" of a vehicle for uninsured motorist claim, there has to be a causal relationship between the injury and a motor vehicle being used as a motor vehicle. The court decided there was no real evidence that a vehicle was used to transport the pumpkin to the scene, and even if there was, using a car as a vehicle to throw pumpkins is not an accepted "use" of a vehicle. The West Virginia Supreme Court affirmed.

Here in South Carolina, we have a similar test for uninsured motorist claims. The injury or damage must arise out of a "use" of a vehicle, which means the injury must be foreseeably identifiable with the normal use, maintenance or ownership of the vehicle and not an act that is too dissociated or remote from the use of an automobile. Tossing pumpkins out the window is probably not foreseeably identifiable with the use of an automobile, so I think our court would come to the same conclusion. However, strange things happen on Halloween. I would argue that it is easy to foresee all kinds of mischief on Halloween...especially having to do with pumpkins.

About Ross Plyler

Ross Plyler is a senior associate with Collins & Lacy practicing in the areas of insurance litigation, employment law, transportation law and college and university law. His professional reputation has earned him a BV Distinguished rating from Martindale-Hubbell. Ross is a summa cum laude graduate of Wofford College, where he received his undergraduate degree in Government and History and was a member of Phi Beta Kappa. He received his Juris Doctor from the University of South Carolina School of Law. Following law school, he served as a law clerk for The Honorable Henry M. Herlong, Jr., United States District Court Judge. Prior to joining Collins & Lacy, Ross was an associate at a firm based in Greenville, South Carolina.

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