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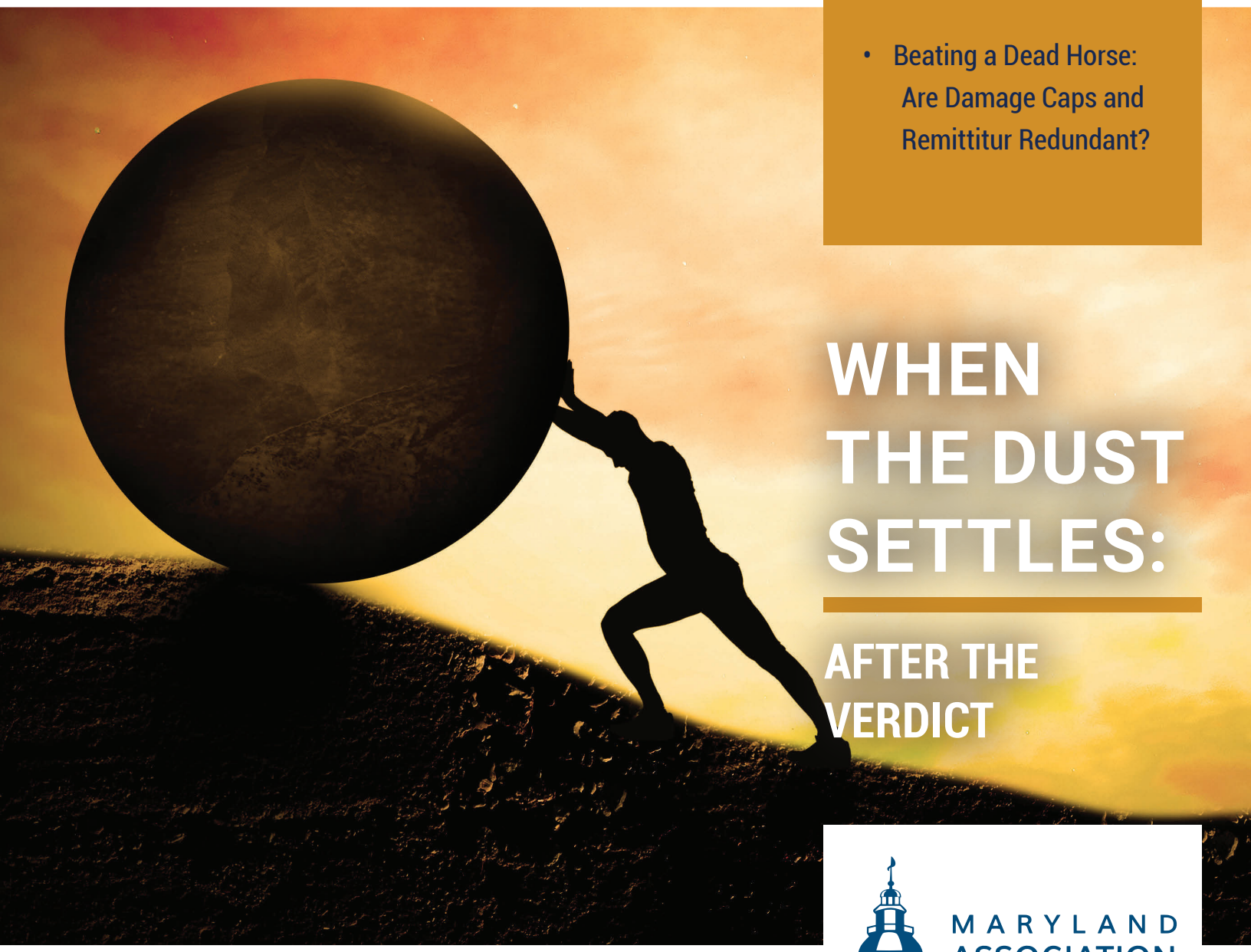
IN THIS ISSUE



WHEN THE DUST SETTLES:

AFTER THE VERDICT

MARYLAND ASSOCIATION FOR JUSTICE

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Trial Reporter is a publication of the Maryland Association for Justice, Inc. (MAJ). It is a forum for the bar, bench and others concerned with the civil trial practice and the administration of justice. We encourage your views and opinions. Letters, articles, and proposals may be submitted to the publisher.

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TABLE OF CONTENTS

When the Dust Settles: After the Verdict

IN THIS ISSUE

Navigating Verdicts Above Policy Limits: A Quick Plaintiff's Attorneys' Guide

By Justin Wallace and Lindsey McCulley

Law Office of Justice A. Wallace, LLC and Salsbury Stringer Sullivan, LLC

The insurance defense team didn't listen. You tried telling them they should pay your demand, but they were convinced you would never get a verdict above their policy limits. Six jurors later and you secured a verdict doing just that. Now, the defense will use tactics to try to minimize the payout. This article will serve as a quick primer for how to set yourself up to collect the full verdict and respond to common defense tactics to avoid payment.

1. Make a Policy-Limits Demand at the End of Discovery

Whether a bad faith claim will be successful, and the insurer will be required to pay a verdict in excess of the insured's policy limits depends on a variety of circumstances surrounding their refusal to settle within policy limits.[i] These circumstances will not be discussed here, but one absolute predicate for an insurer's liability for an excess judgment is that a settlement demand was made within or at the policy limits.[ii] This makes it imperative that you make settlement demands, in writing, following the discovery phase of litigation. When appropriate, you should send a demand at the end of discovery containing some variation of the following language:

> *Please accept this correspondence as the Plaintiff's formal settlement demand in the above-referenced case. The Plaintiff is willing to accept your client's insurance policy limits for a full and final settlement of this case.*
>
> *Your client's negligence had, and continues to have, a profound impact on my client's physical, emotional, and mental well-being. We feel very confident that a jury will award a verdict in excess of your client's liability insurance policy.*
>
> *I trust that you will communicate our demand to your client and advise your client that a verdict beyond policy limits would result in personal liability and the possible loss of your client's personal assets.*

This is the necessary first step in the ability to collect an excess verdict from the insurer (instead of trying to collect from the insured).

2. Obtain an Excess Verdict

Easier said than done, but if you have not accomplished step 2, the remainder of this article is moot for your case.

3. Respond to the Defense Threats

Congratulations, the jury understood the impact that the defendant's negligence had on your client's well-being and returned a verdict over policy limits. Now the insurance defense team begins scrambling to convince you to take a lower amount in a settlement. The following are some of the defense threats you are likely to hear and possible responses to those threats.

> **Threat:** *"We will file post-judgment motions and appeals. Your client will be waiting on their money for a long time."*

Here, your understanding of post-judgment interest becomes a powerful tool. In Maryland, post-judgment interest begins the day that judgment is entered.[iii] Also, post-judgment interest runs at 10% per year.[iv] When faced with threats of protracted appeals, remind defense counsel that their delay tactics are essentially a high-yield investment for your client. This shifts the power dynamic, transforming their delay strategy into a financial liability.

> **Possible Response:** *"My client has already waited a long time because of your refusal to settle this case. They are happy to wait longer, especially since post-judgment interest began the day that judgment was entered. Also, post-judgment interest runs at 10% per year. My client won't get a better return on their investment. So, time now favors my client, not the Defendant or the Insurance Carrier. As to the threat of an appeal, I am confident in the way we tried our case. You are free to appeal, but again, the meter is running."*
>
> **Threat:** *"[The Defendant] will have to file for bankruptcy before paying this verdict."*

This threat of strategic bankruptcy filing, designed to avoid paying a legitimate judgment, constitutes bad faith. Demand the name and contact information of the potential bankruptcy

trustee. This preemptive action is crucial because any potential bad faith claim, along with any possible legal malpractice claim, arising from the insurer's actions, represents a legal and equitable interest that becomes part of the bankruptcy estate.[v] You can also try to have the insured assign you the bad faith claim. This proactive approach not only safeguards your client's potential recovery but also demonstrates your unwavering commitment to pursuing all available avenues for collecting the judgment.

> **Possible Response:** *"Please tell me who the bankruptcy trustee is, as the Defendant's bad faith and possibly malpractice claims are 'legal and equitable interests' of the bankruptcy estate that I will ask to be assigned to my client to settle the debt owed. I will also ask to be assigned the bad faith claim."*

This primer should be one aid in navigating the complexities of verdicts in excess of policy limits. Stay calm, try your case the right way, and remember that the verdict will only be a surprise to the insurance defense team. Make the demand, obtain the verdict, and don't be bullied.

Biographies

Justin Wallace, of the *Law Office of Justin A. Wallace, LLC*, is a solo practitioner in Timonium, Maryland. Justin's practice focuses on civil litigation in workers' compensation and personal injury matters involving motor vehicle collisions, dog bites and premises liability. In practice since 2015, Justin has successfully tried numerous Circuit Court jury trials throughout the State of Maryland.

Lindsey McCulley, of *Salsbury Stringer McCulley, LLC*, is a trial attorney who represents victims of medical malpractice. She is admitted to practice in Maryland and Pennsylvania. Lindsey also serves on the board of visitors for the Maryland Francis King Carey School of law and coaches for the school's National Trial Team. She is a member of the Maryland State Bar Association, the Baltimore City Bar Association, and the Howard County Bar Association. Lindsey lives in Howard County with her husband and two sons.

[i] See, Mesmer v. Maryland Auto. Ins. Fund, 353 Md. 241, 260, 725 A.2d 1053, 1062 (1999)
[ii] Id.
[iii] Md. Rule 3-604(b)
[iv] Md. Code Ann., Cts. & Jud. Proc. § 11-107
[v] See, 11 U.S.C.A. § 541; Lawrence v. Jackson Mack Sales, Inc., 837 F. Supp. 771, 779 (S.D. Miss. 1992), aff'd sub nom. Lawrence v. Jackson Mack Sales, 42 F.3d 642 (5th Cir. 1994)