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WALKER WILCOX WINS APPEAL IN THE WEST VIRGINIA SUPREME COURT

Bob Arnold and Ryan Rodman of Walker Wilcox recently won an appeal in West Virginia that involved novel insurance coverage issues in a compelling factual context. The case arose out of the tragic death of Charleston WV police officer Jerry Jones, who was killed by a ricocheting bullet fired by another officer during a police pursuit.

In March 2011, Officer Jones' Estate brought a declaratory judgment action in Kanawha County, West Virginia, seeking underinsured motorists ("UIM") benefits from Walker Wilcox's client, an insurer of the City of Charleston. The declaratory judgment alleged that Patrolman Jones was killed in the early morning hours of September 13, 2009, at the conclusion of a car chase. Patrolman Jones and other officers had successfully surrounded an automobile driven by criminal suspect Brian Good. When Mr. Good was instructed to exit his car he revved his engine as if threatening to advance toward the police cruisers. After ordering Mr. Good to stop, several officers opened fire. Patrolman Jones was struck by a stray bullet and died as a result of his injuries.

Because Patrolman Jones was a Charleston employee, the Estate sought to recover underinsured motorists ("UIM") coverage from the insurer for Charleston. It was undisputed that Walker Wilcox's client's policy did not provide for UIM coverage, but the Estate alleged that such coverage should exist by operation of law because Charleston did not make a knowing and intelligent waiver of UIM coverage as required by West Virginia law. Rather than engage in what would likely have been protracted litigation, Walker Wilcox moved for judgment on the pleadings, arguing that the court did not even need to ever reach the issue of whether Charleston made a knowing and intelligent waiver. Rather, Walker Wilcox argued that the court should determine from the pleadings that the Estate could not recover UIM benefits as a matter of law because this claim was not a UIM claim. Mr. Jones' death did not arise out of the "ownership, operation, or use of the underinsured vehicle" as required to trigger UIM coverage under West Virginia law. In January 2012, the trial court granted Walker Wilcox's motion for judgment on the pleadings.

The Estate appealed to the West Virginia Supreme Court, asserting three assignments of error. The court found that none of the claimed errors addressed the dispositive issue on which the circuit court based its dismissal. As the court explained:

> *Good's advancing of his vehicle on the officers was not an 'act arising out of the ownership, maintenance, operation, or use' of that vehicle sufficient to bring the incident leading to the death of Patrolman Jones under the umbrella of the underinsured motorist coverage. This decision confirms the one in* Baber v. Fortner *186 W.Va. 413, 412 S.E.2d 814 (1991), where this court held '[a]n intentional shooting which occurs from within the cab of a stationary pickup truck is not an act*

> *arising out of the ownership, maintenance, operation or use of the vehicle.' As in* Barber, *there was no adequate "but for" connection between the use of the vehicle and the death of Patrolman Jones.*

Thus, the West Virginia Supreme Court affirmed the granting of judgment on the pleadings in favor of Walker Wilcox's client.

Click here for the Court's opinion, *Samantha Jones, Administratrix of the Estate of Jerry Jones v. Underwriters at Lloyd's London*, No. 12-0293, 2013 WL 3185081 (W. Va. June 24, 2013).