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Civil Actions - Voir Dire - Insurance - Effect of Insurance Company Advertising

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CIVIL ACTIONS—VOIR DIRE—INSURANCE—EFFECT OF INSURANCE COMPANY ADVERTISING—The Supreme Court of Montana has held that an attorney may ask prospective jurors on *voir dire* if they have been exposed to insurance company advertisements that correlate high jury verdicts in personal injury cases with increased premiums for all insured.

Borkoski v. Yost, 594 P.2d 688 (Mont. 1979).

On June 17, 1975, Jerome Borkoski filed a medical malpractice and wrongful death action in a Montana trial court following the death of his wife in an automobile accident.¹ The defendants in the action were Doctors Robert Yost and James Gouax, the physicians who treated the decedent in St. Patrick's Hospital after the accident.² During the discovery stage of the action, the plaintiff learned that the defendants carried malpractice insurance with companies that had been actively involved in a national advertising campaign criticizing the amount of jury awards in personal injury actions. The thrust of the advertisements, which appeared in magazines of national circulation,³ was that large jury awards resulted in higher insurance premiums for everyone.⁴ One advertisement sponsored by the defendant Gouax' insurance carrier described several cases which it considered to be illustrative of windfall jury awards.⁵

On the first day of the trial, Borkoski presented a motion requesting permission to conduct *voir dire* examination of prospective jurors to

1. *Borkoski v. Yost*, 594 P.2d 688, 689 (Mont. 1979).

2. *Id.* St. Patrick's Hospital was also an original defendant in the action. Prior to trial, Borkoski settled with the hospital for \$90,000. *Id.*

3. The advertisements appeared in periodicals such as *Newsweek*, *Reader's Digest*, *Sports Illustrated* and *Time*. *Id.* at 689-90.

4. *Id.* at 689. An example of these advertisements depicted a judge holding a purported jury instruction which stated: "When awarding damages in liability cases, the jury is cautioned to be fair and to bear in mind that money does not grow on trees. It must be paid through insurance premiums from uninvolved parties, such as yourselves." Beneath this picture in large type was the statement: "Too bad judges can't read this to a jury." The advertisement described several cases which the sponsoring insurance company considered illustrative of "windfall" jury awards. The two-page advertisement then listed several suggestions to rectify the purported problem, concluding:

We can ask juries to take into account a victim's *own* responsibility for his losses. And we can urge that awards realistically reflect the actual loss suffered—that they be a fair *compensation*, but not a reward. Insurers, lawyers, judges — each of us shares some blame for this mess. But it is you, the public, who can best begin to clean it up. Don't underestimate your own influence. Use it as we are trying to use ours.

Id.

5. *Id.* at 689. See note 4 *supra*.

determine whether they had been exposed to and influenced by the advertising campaign.⁶ The trial judge denied Borkoski's motion, but did permit the plaintiff to inquire whether each juror felt that doctors or professional people were unnecessarily oppressed by lawsuits or large verdicts. Borkoski also asked if the prospective jurors had read any articles or advertisements about this type of case which would affect their decision in the litigation.⁷

After a seven-day trial, the jurors deliberated for approximately forty minutes and returned a verdict in favor of the defendants. Borkoski moved for a new trial, contending that he was denied a fair and impartial jury because of the refusal of his *voir dire* motion⁸ by the trial court. The Supreme Court of Montana granted Borkoski's appeal and decided that upon a proper showing of prejudice, an attorney may ask if a prospective juror has read anything that would indicate that verdicts for plaintiffs in personal injury cases result in higher insurance premiums for everyone.⁹ However, the court noted that the questioned advertisements were only intended to reduce the amount of jury awards. Because the jury in this case had absolved the defendant of negligence completely, the Montana high court affirmed the judgment of the district court.¹⁰

Justice Daly, speaking for the unanimous Supreme Court of Montana, noted that the *Borkoski* appeal brought to the court's attention an issue of increasing concern to both lawyers and laypersons.¹¹ Because the advertising campaign of leading insurance companies raised the possibility of serious prejudice to personal injury plaintiffs,¹² the court stated that it was necessary to reexamine the propriety of precluding mention of insurance by attorneys on *voir dire*.¹³ The court agreed with the appellant that the purpose of *voir dire* was to enable counsel to determine the existence of prejudice on the part of jurors and to intelligently exercise peremptory challenges. Justice Daly also stated that the trial judge could set reasonable limits on the scope of examination, with due regard for fairness to both parties.

6. *Id.* at 689-90.

7. *Id.* at 690. The exact questions asked on *voir dire* were unavailable in the appellate court due to the lack of a transcript below. *Id.*

8. *Id.* The appellant also contended that the verdict was not supported by the evidence. *Id.*

9. *Id.* at 695.

10. *Id.*

11. *Id.* at 690.

12. *Id.* As evidence of the possibility of prejudice, the court cited a psychological study which concluded that "even a single exposure to one of these ads can dramatically lower the amount of award a juror is willing to give." See Loftus, *Insurance Advertising and Jury Awards*, 65 A.B.A.J. 68, 69 (1979).

13. 594 P.2d at 690.

The *Borkoski* court noted that the Montana rule allowing *voir dire* on the analogous issue of the financial interest of prospective jurors in insurance companies¹⁴ was the position of the majority of jurisdictions that had considered the issue.¹⁵ The court recognized, however, that the authorities were divided on the question presented in *Borkoski*. Justice Daly first noted that in at least six jurisdictions, such an inquiry was prejudicial and constituted reversible error.¹⁶ At the other extreme, the court noted that the Arkansas Supreme Court recently decided in *King v. Westlake*¹⁷ that counsel could ask on *voir dire* whether prospective jurors had seen the advertisements correlating high jury verdicts with rising insurance premiums; whether they believed the advertisements; and whether this belief would preclude them from rendering a fair and impartial verdict.¹⁸ In the absence of a definitive majority rule, Justice Daly examined the compelling circumstances surrounding Borkoski's motion to examine jurors concerning the insurance advertisements. He noted that there was evidence of institutional advertising by the insurance companies involved in the case and that the advertisements had been carried in popular magazines at about the time of drawing the jury panel. He further recognized that the advertising was primarily calculated to bias jurors against awarding large amounts of damages to personal injury plain-

14. See *Haynes v. County of Missoula*, 163 Mont. 270, 517 P.2d 370 (1973).

15. 594 P.2d at 692.

16. *Id.* at 692-93. Some courts have ruled that questioning to determine prejudice based on belief that high verdicts affect individual premium rates is in the discretion of the trial judge. See *Kiernan v. Van Schaik*, 347 F.2d 775 (3d Cir. 1965); *Murrell v. Spillman*, 442 S.W.2d 590 (Ky. 1969); *Butcher v. Main*, 426 S.W.2d 356 (Mo. 1968). Other courts have concluded that an inquiry into the juror's belief that verdicts affect insurance rates conveyed the impression that the defendant carried insurance and constituted reversible error. See *Barton v. Owen*, 71 Cal. App. 3d 484, 139 Cal. Rptr. 494 (1977); *Maness v. Bullins*, 19 N.C. App. 383, 198 S.E.2d 752 (1973); *Brockett v. Tice*, 445 S.W.2d 20 (Tex. Ct. App. 1969).

17. 572 S.W.2d 841 (Ark. 1978). The controversial *voir dire* questioning in *King* involved the same advertisements at issue in *Borkoski*. 594 P.2d at 693.

18. 594 P.2d at 693. The *Borkoski* court also noted that other jurisdictions had gone further than allowing *voir dire* as a means to combat the injurious effect of insurance advertising. The court noted, for example, that in *Quinn v. Aetna Life & Cas. Co.*, 96 Misc. 2d 545, 409 N.Y.S.2d 473 (Sup. Ct. 1978), the New York Supreme Court, Queens County, had held that an insurance company could be enjoined from publishing advertisements of the sort at issue in *Borkoski* on the grounds that the advertisements constituted jury tampering and denied a plaintiff the right to a fair and impartial jury. 594 P.2d at 693. In Kansas and Connecticut, some insurance companies have entered into consent agreements with the Commissioners of Insurance in which the companies have agreed to stop publishing the advertisements in those states. See *Hatchell, Kronzer, and Scott, Insurance Company Advertising: New Problems in Voir Dire?* 10 ST. MARY'S L.J. 393, 439 (1979) [hereinafter cited as *Insurance Company Advertising*].

tiffs such as Borkoski.¹⁹ Given this background, the court concluded that a line of inquiry designed to uncover jury bias created by the advertisements should be permitted. The court pointed out that liberal *voir dire* was the best means of securing a plaintiff's right to an impartial jury when insurance companies inject the issue of insurance into the consciousness of every potential juror.²⁰

Thus, the court held that upon a showing of possible prejudice, an attorney may ask if a prospective juror has heard or read anything to indicate that jury verdicts for plaintiffs in personal injury cases result in higher premiums for everyone. If a juror responds affirmatively, the *Borkoski* court ruled that the attorney may inquire whether the juror believed those materials and whether this belief would interfere with the juror's ability to render a fair and impartial verdict. The Montana court stated that limited follow-up questions should be permitted, depending upon the veniremen's responses and subject to the trial court's discretion.²¹ In an attempt to balance the rights of the defendant to a fair and impartial jury, the *Borkoski* court also held that certain general questions should precede specific questions about the advertisements. As an example, the court stated that an attorney should ask if the prospective juror has heard of or read anything which might affect his ability to be impartial, or whether the prospective juror regularly reads any of the magazines or newspapers in which the insurance advertisements or articles appeared. Justice Daly noted that a negative response to the introductory questions would obviate further inquiry. He emphasized that *voir dire* should be permitted only after counsel has shown that he is acting in good faith in interjecting insurance into the case.²²

Although the court accepted Borkoski's argument that *voir dire* on the effect of insurance company advertising should be allowed in the proper situation, the court concluded that the purpose of the advertisements was to reduce the amount of damages awarded by a jury, not to prevent a jury from finding a party negligent in the first place.²³ Because the *Borkoski* jury never reached the question of damages, the

19. 594 P.2d at 694. See note 12 *supra*.

20. 594 P.2d at 694.

21. *Id.* The court declined to comment on the permissible nature or extent of the follow-up questions, but did conclude that circulation among the jury panel of the insurance advertisements, as Borkoski had planned, would be improper and would create the very prejudice being guarded against. *Id.*

22. *Id.* at 695. The court suggested that the trial judge should be advised, in the absence of the jury, of the proposed questions and their purpose in order to determine the plaintiff's good faith. *Id.* See *Canter v. Lowrey*, 69 N.M. 81, 364 P.2d 141 (1961).

23. 594 P.2d at 695.

court held that any error committed was harmless and not grounds for reversal.²⁴

The media campaign of the late 1970's by insurance companies, aimed at what the industry considers excessive jury awards, has created a conflict between the rule of nondisclosure of insurance during a trial²⁵ and the policy of *liber voir dire* to determine the prejudices of prospective jurors.²⁶ The rule of nondisclosure developed due to the fear that juries would award extravagant verdicts if the existence of insurance were made known to them.²⁷ The judicial rationale was that if a jury knew that a defendant did not have to pay the judgment personally, large verdicts would be awarded regardless of liability.²⁸ Furthermore, since insurance has no bearing on the negligence of a defendant, it has been considered an irrelevant issue.²⁹ There are, however, four recognized situations when insurance may be interjected during a trial. If insurance is relevant to an issue such as agency, ownership, or control of a vehicle or instrumentality, its disclosure has been allowed.³⁰ Second, when the credibility of a witness is suspect due to his employment by an insurance company, that fact can be used to show his bias.³¹ The courts have also recognized that when insurance coverage can not be severed from the admission of a party without lessening the evidentiary value of the admission, disclosure is warranted.³² Finally, when a witness makes an unexpected or unresponsive reference to insurance, reversal is not mandated.³³

24. *Id.*

25. J. McCORMICK, EVIDENCE § 201 (1972) [hereinafter cited as McCORMICK].

26. See Swain v. Alabama, 380 U.S. 202 (1965); *Insurance Company Advertising*, supra note 18, at 395. The insurance industry engaged in a similar, although less effective, campaign during the 1950's in an attempt to reach and affect potential jurors. *Id.* at 399.

27. See, e.g., Kiernan v. Van Schaik, 347 F.2d 775, 781 (3d Cir. 1965); Wilson v. Thurston, 82 Mont. 492, 267 P. 801 (1928); Kuntz v. Spence, 67 S.W.2d 254, 256 (Tex. 1934).

28. See, e.g., Muehlebach v. Mercer Mortuary and Chapel, Inc., 93 Ariz. 60, 378 P.2d 741 (1963).

29. See Slough, *Relevancy Unraveled*, 5 KAN. L. REV. 675, 710-18 (1957).

30. See, e.g., Pinckard v. Dunnavant, 281 Ala. 533, 206 So.2d 340 (1968) (landlord's liability insurance for third persons on premises admissible); Carlton v. Johns, 194 So.2d 670 (Fla. Dist. Ct. App. 1967) (defendant's liability insurance could be introduced at trial to establish ownership of automobile involved in accident); Cherry v. Stockton, 75 N.M. 488, 406 P.2d 358 (1965) (evidence that employer pays liability insurance on employee is admissible to prove master-servant relationship).

31. See O'Donnell v. Bachelor, 429 Pa. 498, 240 A.2d 484 (1968) (evidence that witness was employed by defendant's company admissible to permit jury to determine if employment relationship predisposed witness toward defendant).

32. See Meda Constr. Co. v. Jenkins, 137 Ga. App. 344, 223 S.E.2d 732 (1976) (evidence of admission by independent contractor's construction foreman that insurance would take care of cracked wall was not prejudicial error).

33. See Rigelman v. Gilligan, 265 Or. 109, 506 P.2d 710 (1973) (evidence of insurance admitted by witness permitted).

In addition to these exceptional situations involving the presentation of evidence, twenty-one jurisdictions³⁴ have ruled that counsel may in good faith question jurors on *voir dire* concerning their financial interest in insurance companies.³⁵ The courts which allow the *voir dire* inquiry have attempted to balance the judicial aversion to allowing the interjection of insurance coverage into the minds of jurors against the policy of American *voir dire*, which is traditionally extensive and probing.³⁶ The purpose of jury screening is to determine whether there is ground for a peremptory challenge to exclude a juror with inordinate partialities. This assures litigants a jury that is capable of deciding the case on the basis of the facts presented instead of on individual prejudices.³⁷ In light of these goals of *voir dire*, the *Borkoski* case emphasized that a reevaluation of the general rule prohibiting discussion of insurance coverage was needed. Because jurors may now bring a bias for insurance companies into the courtroom,³⁸ courts are faced with situations in which the existence of insurance should be candidly discussed with jurors on *voir dire*.³⁹

34. See *Vredenburg Saw Mill Co. v. Black*, 251 Ala. 302, 37 So.2d 212 (1948); *Kotzebue v. Ipalook*, 462 P.2d 75 (Alaska 1969); *Tantum v. Rester*, 241 Ark. 1059, 412 S.W.2d 293 (1967); *Tomblinson v. Nobile*, 103 Cal. App. 2d 266, 229 P.2d 97 (1951); *Mayer v. Sampson*, 157 Colo. 278, 402 P.2d 185 (1965); *Sutton v. Gomez*, 234 So. 2d 725 (Fla. Dist. Ct. App. 1970); *Holland v. Watson*, 118 Ga. App. 468, 164 S.E.2d 343 (1968); *Carr v. Kinney*, 41 Hawaii 166 (1955); *Seyferlich v. Maxwell*, 28 Ill. App. 2d 469, 171 N.E.2d 806 (1961); *Gamble v. Lewis*, 227 Ind. 455, 85 N.E.2d 629 (1949); *Nathena v. Burchett*, 189 Kan. 350, 369 P.2d 487 (1962); *Insko v. Cummins*, 423 S.W.2d 261 (Ky. 1968); *Fosness v. Panagos*, 376 Mich. 485, 138 N.W.2d 380 (1965); *Rom v. Calhoun*, 227 Minn. 143, 34 N.W.2d 359 (1948); *Hancock v. Light*, 435 S.W.2d 695 (Mo. Ct. App. 1968); *Canter v. Lowrey*, 69 N.M. 81, 364 P.2d 140 (1961); *Sheridan v. Sheridan*, 286 App. Div. 926, 142 N.Y.S.2d 819 (1955); *Abbott v. Rudolph*, 73 S.D. 628, 47 N.W.2d 563 (1951); *Swift v. Wimberly*, 51 Tenn. App. 532, 370 S.W.2d 500 (1963); *Kollmorgan v. Scott*, 447 S.W.2d 236 (Tex. Ct. App. 1969); *Filipiak v. Plombon*, 15 Wis. 2d 484, 113 N.W.2d 365 (1962).

35. Although this is not an exception to the rule excluding evidence of insurance, it is a situation which results in an intimation to jurors that the defendant is insured. *McCORMICK*, *supra* note 25, § 201. Some jurisdictions also allow *voir dire* on whether the prospective jurors are policyholders in a particular company. See, e.g., *Haston v. Gightower*, 111 Ga. App. 87, 140 S.E.2d 525 (1965); *Barrett v. Morris*, 495 S.W.2d 100 (Mo. Ct. App. 1973). See also *Borkoski v. Yost*, 594 P.2d at 692.

36. In *Swain v. Alabama*, 380 U.S. 202 (1965), the Court noted that probing questions allow counsel to determine possible bias and thus to employ his peremptory challenges or challenges for cause. *Id.* at 219.

37. *Id.* at 220.

38. See text accompanying notes 30-36 *supra*.

39. Apart from the *voir dire* area, courts have been reexamining the theory that the mention of insurance prejudices a jury against a defendant. This trend is based on the recognition that the modern juror now enters the courtroom with the preconception that insurance exists. In addition, liability insurance is almost universally carried by automobile owners, as is malpractice insurance by professionals. Given these realities, courts have stated that it is naive to believe that jurors are not aware of the widespread

The continuing strength of the judicial policy against presentation of the fact of insurance is evidenced by the rulings of the courts of California,⁴⁰ Texas,⁴¹ and North Carolina.⁴² These jurisdictions maintain that despite the prejudicial effect that the controversial advertisements may have on prospective jurors, the interjection of insurance into the case during the *voir dire* results in prejudice against the defendant. The rationale for the adherence to the traditional rule is that disclosure places an unnecessary emphasis upon the subject and implants insurance in the jurors' minds.⁴³ It has also been said that questioning veniremen about the advertisements will not disclose their prejudices, since jurors are reluctant to admit a bias that would preclude them from rendering an impartial verdict.⁴⁴ Thus, *voir dire* questions about possible bias are viewed in these jurisdictions as a fruitless line of inquiry.

There are, however, some courts that have shown a willingness to allow a broader *voir dire* on insurance questions in limited situations. The United States Court of Appeals for the Third Circuit,⁴⁵ Kentucky,⁴⁶ and Missouri⁴⁷ have held that the determination of what is permissible *voir dire* is in the discretion of the trial courts, with the only limitation being good faith.⁴⁸ In other words, the proper purpose of inquiry is to determine a juror's bias. It is not to be used to implant the defendant's status as insured in a prospective juror's mind.⁴⁹ These courts, however, have not sanctioned a line of inquiry concerning the insurance company advertisements.

use of insurance, and equally implausible to conclude that they do not assume that a defendant is insured. See, e.g., *Muehlebach v. Mercer Mortuary and Chapel, Inc.*, 93 Ariz. 60, 378 P.2d 741 (1963); *Causey v. Cornelius*, 164 Cal. App. 2d 269, 330 P.2d 468 (1958).

40. *Barton v. Owen*, 71 Cal. App. 3d 484, 139 Cal. Rptr. 494 (1977).

41. *Brockett v. Tice*, 445 S.W.2d 20 (Tex. Ct. App. 1969).

42. *Maness v. Bullins*, 19 N.C. App. 386, 198 S.E.2d 752 (1973). *But see Parris v. Garner Commercial Disposal*, 40 N.C. App. 282, 253 S.E.2d 29 (1979), in which the court indicated its interest in protecting a resident plaintiff's right to have a jury reach its verdict free of outside influence. Although the court was concerned mainly with asserting jurisdiction over an insurance company advertising in periodicals in the state, the court suggested that it would uphold an injunction directing the insurance company not to place the advertisements at issue in *Borkoski*. 253 S.E.2d at 35.

43. 594 P.2d at 694-95.

44. See *Barton v. Owen*, 71 Cal. App. 3d 484, 139 Cal. Rptr. 494 (1977).

45. See *Kiernan v. Van Schaik*, 347 F.2d 775 (3d Cir. 1965).

46. See *Murrell v. Spillman*, 442 S.W.2d 590 (Ky. 1969).

47. See *Butcher v. Main*, 426 S.W.2d 356 (Mo. 1968).

48. *Kiernan v. Van Schaik*, 347 F.2d 775 (3d Cir. 1965); *Insko v. Cummins*, 423 S.W. 2d 261 (Ky. 1968); *Hancock v. Light*, 435 S.W.2d 695 (Mo. Ct. App. 1968).

49. See *Slough, Relevancy Unraveled*, 5 KAN. L. REV. 675 (1957). See also Comment, *Voir Dire Examination of Jurors Concerning Insurance Company Interests*, 15 DE PAUL L. REV. 148 (1965); Comment, *Defendant Rebutts Inference of Insurance*, 5 STAN. L. REV. 143 (1952).

Borkoski v. Yost marked only the second time that a state court has decided that upon a showing of good faith, counsel could ask prospective jurors if they believed that the size of jury verdicts in personal injury cases affected insurance premiums.⁵⁰ In *King v. Westlake*,⁵¹ the Arkansas Supreme Court expanded its good faith doctrine⁵² to encompass questions about the insurance advertisements. The court rejected the defendant's contention that the questioning served no value, and resulted in implanting the existence of insurance in the jurors' minds. The Arkansas court held that the questioning was proper because it was conducted in good faith and enabled counsel to determine whether there were grounds for a challenge for cause or a peremptory challenge.

Although the advertising campaign of the insurance industry clearly invites potential jurors to consider the insurance implications of their verdicts,⁵³ the majority of courts have not disregarded their traditional aversion to the mention of insurance coverage within the hearing of the jury.⁵⁴ Although the judicial posture on the issue is still unsettled, the trend is to permit some mention of insurance on *voir dire* upon a good faith showing that it is necessary, but not all courts which have adopted the good faith rule have directly addressed the insurance advertising controversy.⁵⁵ Controlled questioning on the issue would effectuate both the policy of protecting the defendant from prejudice⁵⁶ while permitting probing *voir dire* to determine possible prejudice against the plaintiff's interests. The *Borkoski* decision, with its requirement of preliminary questions to determine whether inquiry about the advertisements is necessary in the first instance, is a balanced approach to a sensitive issue. *Borkoski* effectively counteracts the effects of prejudicial insurance advertising. It is a more expedient and effective method of providing protection to plaintiffs than enjoining the

50. At least one jurisdiction has enjoined the insurance company advertisements. In *Quinn v. Aetna Life & Casualty Co.*, 96 Misc. 2d 545, 409 N.Y.S.2d 473 (Sup. Ct. 1978), the court recognized that commercial speech is protected only if truthful. *Id.* at 554, 409 N.Y.S.2d at 477. See *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). When the advertising is unfair and abusive, the state has the power to regulate the expression. The sentiment of the New York Supreme Court, Queens County, was that it had a duty to restrain unfair and abusive advertising infringing upon the judicial process. 96 Misc. 2d at 554, 409 N.Y.S.2d at 477. See also note 42 *supra*. Connecticut and Kansas have accomplished the same result by securing consent orders from insurance companies in which the industry agreed not to publish the advertisements. See note 18 *supra*.

51. 572 S.W.2d 841 (Ark. 1978).

52. See note 34 *supra*.

53. See note 4 *supra*.

54. See text accompanying notes 27-29 & 43-44 *supra*.

55. See text accompanying notes 45-49 *supra*.

56. See text accompanying notes 21-22 *supra*.

publication of the advertisements.⁵⁷ Although enjoining the advertising eliminates the possible prejudicial effect on those not yet exposed to the advertisements, it cannot eliminate the effect on prospective jurors who have already seen the advertisement.⁵⁸ Thus, the *Borkoski* solution is the preferable one.

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57. See *Quinn v. Aetna Life & Cas. Co.*, 96 Misc. 2d 545, 409 N.Y.S.2d 473 (Sup. Ct. 1978). In *Quinn*, the court traced the line of United States Supreme Court cases which have held that commercial speech is protected under the first amendment from prior restraint so long as it is not false or misleading. *Id.* at 551-55, 409 N.Y.S.2d at 476-78. The court found that the advertisements in question are misleading because they imply that personal injury awards are excessive and unwarranted by the facts but do not indicate that such awards may be reduced or set aside. *Id.* at 555, 409 N.Y.S.2d at 478. See Geisel, *Horror Story Ads Untrue?—Can't Prove Mower, Claims Assertions*, 11 BUS. INS. 1, 66 (1977).

58. See Loftus, *Insurance Advertising and Jury Awards*, 65 A.B.A.J. 68 (1979).

