10 Things You Should Know About Motor Vehicle Law & Small Claims Court

1. The answer to "**who owns this motor vehicle**" depends on why you're asking the question. If the circumstances involve commercial transactions, the UCC governs. According to GS 25-2-01(2), ownership is transferred to the buyer when the seller transfers physical possession of the motor vehicle, even if a document of title will be handed over at some other time and place. For purposes of the tort of conversion, then, a seller who takes back possession of a motor vehicle from the buyer without permission may be liable despite the fact that the seller has never handed over the title.

   On the other hand, if ownership is an issue to be determined in relation to a dispute over insurance coverage or automobile negligence cases, the provisions of the North Carolina Motor Vehicle Act apply. Under the provisions of GS Ch. 20, ownership of the vehicle is transferred when the seller gives the buyer the vehicle and "the certificate of title thereto properly endorsed to the purchaser." GS 20-60.

2. What has the seller of a vehicle accomplished by keeping possession of the certificate of title? The law says the seller has retained "at most a **security interest**" in the property. This security interest is enforceable, however, only if the written documents involved in the purchase, taken together, clearly indicate the intention of the parties to create a security interest. Even if the seller has a security interest, his interest will have priority over other lien holders only if the interest is noted on the title and submitted to DMV.

3. Magistrates are authorized to hear **motor vehicle mechanic and storage liens** cases arising under GS 44A-2(d) and GS 20-77(d). These cases have three unique procedural aspects compared to other small claims actions: (i) the action must be filed in the county in which the action arose; (ii) the defendant may be served by any of the methods set out in GS 1A-1, Rule 4(j) and (j1), including service by publication; and (iii) the remedy sought is actually a legal declaration by the court pertaining to the validity and amount of the lien.

4. Magistrates may be called upon to appoint an **"umpire"** pursuant to GS 20-279.21(d1) and 7A-292(16) in situations involving a motor vehicle accident in which liability is undisputed and neither the parties nor independent appraisers can reach agreement about the amount of damages. In such a

situation, the magistrate contacts the NC Department of Insurance Agent Services Division (919-807-6800 orASD@ncdoi.gov) to obtain a list of licensed appraisers in the area. The magistrate picks an appraiser at random and contacts that appraiser to see if he or she is willing to accept the appointment. If not, the magistrate selects and contacts another appraiser, and so on, until one agrees to serve.

5. What recourse do citizens have if they believe their vehicle has been unlawfully towed? GS Ch. 20, Art. 7A allows a citizen to request a "**probable-cause hearing" if the vehicle was towed** under direction of an LEO (except in cases involving forfeiture, execution, or when the vehicle is seized as evidence in a criminal proceeding). The statute provides little in the way of procedural details, but provides that the citizen should file a written request for a hearing "with the magistrate in the county where the vehicle was towed. . . . " GS 20-219(11)(c). The magistrate must conduct the hearing within 72 hours of receiving the request. The sole question for determination is whether PC existed for the towing. A sample order and additional details are available by searching the SOG publications website for two AOJ bulletins written by Joan Brannon.

6. Right to an accurate estimate for repairs: The **NC Motor Vehicle Repair Act** (GS 20-354 – 354.9). This detailed law prohibits automobile repair shops from charging an amount exceeding the written estimate plus 10% in situations governed by the Act. The Act applies only to repairs in excess of $350. The Act also identifies a long list of prohibited practices (including making deceptive statements, charging for unauthorized repairs, refusing to provide a copy of documents signed by the customer, etc), thereby laying the groundwork for an action for unfair or deceptive practices. Violation of the law may come up as a defense in an action seeking to establish a motor vehicle lien due to the Act's provision that payment of the estimated amount plus 10% compels release of the vehicle to the customer.

7. An owner of a car may be held **vicariously liable for** the negligence of the driver, based on the owner's legal right to control the operation of the vehicle. G.S. 20-71.1 (paraphrased) provides that in all actions for injury to person or property by motor vehicle, proof of ownership is prima facie evidence that owner authorized driver's actions. Proof of registration is prima facie evidence of ownership as well as that operator

8. **Family Purpose Doctrine:** Even when the owner of a car is not a passenger at the time of the negligent action, the owner is responsible if

   (1) The driver is a member of the owner's family or household and lives in the owner's home;
   (2) The vehicle is one used for the general "use, pleasure, and convenience of the family," and

(3) The vehicle was being so used at the time of the accident with the owner's express or implied consent.

9. **Automobile negligence cases and insurance companies**: As a general rule, the proper plaintiff [i.e., the real party in interest pursuant to GS 1A-1, Rule 17(a)] in a motor vehicle negligence case is the person who suffered the injury. The plaintiff's insurance company is a permissible but not necessary party if the company has partially compensated the plaintiff for the injuries. The plaintiff's insurance company is the real party in interest only if the company has fully compensated the plaintiff, including the amount of any deductible.

   As a general rule the appropriate defendants in an automobile negligence action are the driver and the owner of the vehicle. The defendant's insurance company is not an appropriate party (although the company may provide an attorney for their client/defendant). Insurance companies are appropriate defendants only in actions brought by the insured in a breach of contract action.

10. The **collateral source rule** is a legal doctrine holding that a defendant will not be excused from fully reimbursing plaintiff for damages based on payments made to plaintiff by third parties (such as insurance companies, employers, or church groups).