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## And The Defense Wins

### Christina Rankin



DRI member [Christina Rankin](#), a shareholder with **Guess & Rudd PC** in Anchorage, Alaska, prevailed on a case with dueling summary judgment motions regarding the availability of uninsured motorist (UM) coverage under a business auto policy following the murder of a taxicab driver by her passenger. The case was filed in the U.S. District Court for the District of Alaska.

A female taxicab driver responded to a late-night call when a male passenger entered the front seat of her taxicab and asked to be taken to a nearby town. The route to the nearby town required a permit that the taxicab driver did not possess. When the driver replied that she could not transport the passenger, he became angry and a violent argument ensued. The passenger stabbed the driver with a knife and forced her into the backseat of the taxicab. With the driver injured in the backseat, the passenger stole the taxicab and drove it to the nearby town. The driver died as a result of the stabbing. Authorities were able to apprehend the passenger, who ultimately pled guilty to second degree murder.

The driver's estate brought suit against the insurance company that issued the business auto policy covering the taxicab at the time of the assault. The estate sought UM coverage for damages suffered as a result of the stabbing. The insurance policy provided for the recovery of uninsured motorist bodily injury coverage resulting from an accident involving the uninsured motorist's "use" of the uninsured motor vehicle.

The defense filed a motion for summary judgment, arguing that the taxicab was not uninsured and that, in any event, the driver's injury resulted from the passenger's stabbing, not any "use" of the taxicab. The estate filed a cross-motion, arguing that the taxicab became uninsured when the passenger stole it and used it to deprive the driver of medical treatment which might have saved her life. The estate posited that, under such circumstances, no policy provided liability coverage for the insured's wrongful death, which it argued resulted from the taxicab's use. The court granted summary judgment in favor of the insurer on both grounds. The court found that the passenger was only an "attacker"—not a "motorist"—when the assault occurred. The court further found that the passenger became a motorist by taking unauthorized control of the taxicab only after the driver had already been stabbed and forced into the backseat. Lastly, the court found that, because the taxicab was not being used for transportation at the time of the attack, the driver's injuries did not arise out of the taxicab's "use." The estate chose not to appeal the court's ruling.

Ms. Rankin is an active member of the DRI Women in the Law Committee and Insurance Law Committee, among others.

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