

Recent Developments in the Law

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PUNITIVE DAMAGES: In *Montgomery Ward v. Wilson*, 339 Md. 701, the Court of Appeals of Maryland (1) held that in false imprisonment actions, punitive damages are recoverable only on the basis of actual malice, (2) reiterated that in connection with both intentional and non-intentional torts, an award of punitive damages generally must be based upon actual malice, in the sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will or fraud, (3) again held that clear and convincing evidence must support an award of punitive damages (4) stated that in a malicious prosecution case, lack of probable cause for prosecuting a plaintiff does not necessarily indicate a wrongful motive, and (5) further held that for punitive damages to be awarded in malicious prosecution actions, a Plaintiff must establish by clear and convincing evidence the defendant's wrongful or improper motive for instituting the prosecution.

Montgomery Ward v. Wilson stands for the proposition that actual malice for punitive damages is not inherent in the elements of the tort of fraud. The court further indicated that a jury instruction that punitive damages should not be disproportionate to either the wrongfulness of the defendant's conduct or the defendant's ability to pay should be given in cases involving punitive damages.

INSURANCE: In the case of *Aetna v. Cochran*, 337 Md. 98, a case of which I reported approximately one year ago, the court held that an insured [not the insurer] could establish the potentiality of insurance coverage by extrinsic evidence beyond the tort claim allegations. The court ruled that an insured may refer to evidence beyond the tort complaint to establish the potentiality of coverage, and that a duty to defend arises if the insured demonstrates that there is reasonable potential that an issue triggering coverage will be generated at the trial of the tort claim.

In *Chantel Associates v. Mount Vernon*, 338 Md. 131, the Court of Appeals determined that the insured's duty to indemnify could be determined in a declaratory judgment action prior to filed judgment in the underlying lead paint case, and that the insurer's indemnification duty reached to the limits of its liability policy.

TORT LAW, DUTY TO DEFEND: In *Carroll Lane v. Bethlehem Steel Corporation*, CSA No. 146, Sept. Term, 1995, Dec. 1, 1995, the court held that if an employer notifies an independent contractor of latent dangers in the workplace, it has fulfilled its duty to warn the independent contractor's employees.

TORT LAW, WORKERS' COMPENSATION: In the *Francis R. Hayes v. You S. Wang*, CSA No. 669, Sept. Term, 1995, Jan. 3, 1996. The court held that where a Plaintiff has received workers' compensation benefits arising from an accident, an exception to the statute of limitations on tort actions tolls the statutory period for two months from the first day workers' compensation were received.

INSURANCE LAW - UNINSURED MOTORIST PROVISION OF POLICY VIABLE AFTER TWO YEAR INTERVAL: In *General Accident Insurance Company v. Florence E. Scott, et al.*, CSA No. 901, Sept. Term, 1994, Jan. 3, 1996. The court held that when an insured party notified her insurance

company that she intended to file an uninsured motorist claim more than two years after the arbitrator decided both liability and damages, that the delay in filing suit was not a defense to payment on the grounds that the delay was unreasonable and harmed the insurance company's interest.

The above-noted decisions are deemed to show a trend in the court continuing to restrict recovery for punitive damages, as well as extending the scope of an insurer's duty to defend by permitting the insured, but not the insurer, to go beyond the four corners of the insurance policy and complaint.

