

Recent Developments in the Law

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Negligence/Exclusion of Expert Testimony: In *Hawkins v. D.C.*, the D.C. Superior Court, Burnett, J. decided that there was sufficient evidence for a jury to find gross negligence against the District of Columbia with respect to the wrongful death of two motorists killed by an individual who was being chased by D.C. police officers. The Court held that the finding of gross negligence was supported by the fact that the police officers were pursuing the suspect through a residential neighborhood at 70-80 mph, continued the high speed pursuit while approaching a busy intersection at rush hour, and failed to break off the pursuit. The Court did, however, order the jury verdict of \$5,997,751.77 reduced to \$2,225,598.77 on the grounds that the "expert" testimony offered by the plaintiff's economic expert to the effect that the minor decedent (8 year old) "who was deemed by some to be a bright boy" would have graduated from college was too speculative. The economic expert's testimony with respect to several other components of damages, including loss of maternal services to surviving children was also held to be too vague.

Contributory Negligence: The United States District Court for the District of Columbia held in *O'Connor v. D.C., et al.*, that a pedestrian who fails to look (at least briefly) to see if there is oncoming traffic before stepping into a busy street at rush hour is negligent as a matter of law. The plaintiff testified that she had not checked the traffic signal before stepping into the street, nor had she looked to see oncoming traffic. The Court held that under these facts, even if there was a sufficient basis for finding that the District of Columbia was negligent in allowing the puddle to accumulate, the plaintiff's actions constituted contributory negligence as a matter of law, and barred any recovery by the Plaintiff.

Insurance/Notice: In *CSX Transportation, Inc. v. Commercial Union Ins. Co.*, the United States Court of Appeals for the D.C. Circuit held that an insured on an excess liability policy has a duty to notify his insurance company of a claim when a "reasonable insured knowing everything the insured knows or should have known would give notice." The Court explained this standard as taking into account the plaintiff's past experience with claims, and whether or not lawsuits directed against the plaintiff were usually settled for "pennies on the dollar," and thus, under an amount which would implicate the excess policy.

Damages/Contribution: In *Berg, et al. v. Footer*, the D.C. Court of Appeals held that an uncontested stipulation setting a defendant's liability, made the defendant a joint tortfeasor for determining allowable credit to a non-settling defendant against whom a jury awarded full damages. The Court determined that the plaintiff should receive a pro rata credit, rather than a pro tanto credit, even where the Plaintiff's recovery exceeds the amount of the verdict.

Defamation: In *Washington v. Smith, et al.*, the U.S. Court of Appeals for the D.C. Circuit decided

that a defendant was entitled to summary judgment in its favor where the plaintiff could not show that the opinion of a basketball coach published in a sports magazine was "objectively verifiable" and false, nor supported by the facts. The Court stated that on opinions expressed in the magazine article concerning a basketball coach's ability to "screw things up" were vague and not "objectively verifiable," and as such, were not actionable in defamation.

Negligence/Duty: In *N.O.L. v. D.C.*, the D.C. Court of Appeals held that a hospital has no duty to disclose to a husband his wife's HIV-positive test results in light of D.C. Code § 6-2805, which specifically protects such results from disclosure to third parties. The plaintiff had contended that the hospital's failure to disclose the positive test results to him constituted negligent infliction of emotional distress when the condition was finally made known to him some time later. The Court held that contrary to the plaintiff's assertion of the existence of a duty to inform him, the hospital actually had a duty *not* to inform him without his wife's written consent under D.C. Code § 6-117 (b)(1).

Amendment of Pleadings/Statute of Limitations: In *Arrington v. District of Columbia*, the D.C. Court of Appeals held that when a plaintiff Amended a Complaint which changed the name of the Defendant from D.C. General Hospital to the District of Columbia, the change constituted a change of party under Superior Court Rule 15(c) and did not relate back to the time of filing so as to bring the Complaint within the applicable statute of limitations. The Court held that the question of whether an amended pleading relates back to the date of filing for statute of limitations purposes involves a two-step process. The Court must decide whether the amendment "changed the party," i.e., whether the amendment merely corrects a misnomer or actually adds a new party. If the amendment actually names a new party, it relates back to the date of filing only if notice requirements are met. The Court held that the amendment in this case added a new party which had not received proper notice under D.C. Superior Court Rules, and, therefore, dismissed the action on statute of limitations grounds.

Insurance/Underinsured Motorists: In *Thomas v. Abu-Ghannon, et al.*, the Superior Court held that the set-off provisions of an underinsured motorist policy do not cover the salary paid to a park policeman who was injured in an accident prior to his retirement on disability, nor to the retirement benefits he later received. GEICO, the underinsured motorist carrier, claimed that it was entitled under the policy language to a set-off and reductions for the workers' compensation and wage payments received by its insured which essentially extinguished the underinsured motorist claim. While all parties agreed that GEICO was entitled to a set-off for the workers' compensation payments received, the Court held that the salary paid to the plaintiff during a period of disability was not "disability benefit," and that GEICO was not entitled to a set-off for these amounts. The Court also declined to bring retirement benefits under the ambit of the policy language and apply those amounts as a set-off.

Product Liability/Design Defect: In *Ferguson, et ux. v. Winkler GMBH & Co.*, the U.S. Court of Appeals for the D.C. Circuit ruled that where a manufacturer provided warning labels against removing a panel on bakery equipment without first stopping the machine, a plaintiff who reached into the equipment was not able to demonstrate that the machine had been sold in an unreasonably dangerous condition. The Court found that the plaintiff had not shown "significantly probative"

evidence that the design of the machine contemplated workers reaching into the particular part of the machinery involved, and that the manufacturer provided a large warning label against reaching into the moving machinery. The Court thus found that both the design and warnings of the machinery were adequate and reversed the District Court's finding of liability.

