

Recent Developments in the Law

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Insurance Liability Due to Agent Assurances: In *Nationwide Mutual Insurance Co. v. Regional Electric Contractors, Inc.*, CSA No. 1299, Sept. Term, 1995. Filed, May 31, 1996, the Maryland Court of Special Appeals held that a commercial insurer was liable for damages from an accident despite the fact that there had been no tort proceeding or lawsuit between the two parties. Due to the fact that the insurance agent urged the insured to pay damages to the third party, assuring it that coverage was in place. The Court found that the insurance company was bound to provide coverage, despite the exclusionary language of the policy. The action stemmed from a switchboard explosion caused by the employee of an electrical contracting company. The insurance contract specifically excluded accidents caused by the insured company's faulty work, however, after the switchboard explosion, the insured repaired the property owner's damages so that suit was never filed against the company. The insurer argued that the lack of suit left its insured's liability undetermined, leaving its coverage obligation uncertain. The Court of Special Appeals agreed that enforcing coverage absent a tort proceeding between the damaged and the insured, is "manifest opportunity for fraud and collusion between the insured and the third party - something for which no insurance company bargains." However, it was Regional's Nationwide agent who suggested the repair be made, and assured the contracting company that it was covered for the switchboard accident. As a result, the Court of Special Appeals took a minority position holding that the agent's words estopped Nationwide from denying coverage, even if the accident would not be covered under the policy's terms.

Medical Malpractice/ Damages: In *Travis Pepper, a minor, et al. v. Johns Hopkins Hospital*, CSA No. 1241, Sept. Term, 1995. Filed May 31, 1996, the Court of Special Appeals held that even though a minor may not be financially responsible for paying his own medical costs, such costs may be recoverable where evidence shows that the minor was not getting the proper medical care. Johns Hopkins Hospital had argued that since the minor child could not be held financially responsible for his own medical care, he could not claim such expenses as damages on his own behalf. The Court found that since there was evidence to show that the parents were not financially able to provide their son with all of the care he needed, a jury could have found that he was entitled to collect medical expenses.

Workers' Compensation Statute of Limitations: In *Karen E. DeBusk v. Johns Hopkins Hospital*, CSA No. 110, Sept. Term, 1995. Filed June 3, 1996, the Court of Appeals held that the two year statute of limitations for filing a Workmens' Compensation claim runs from the date that the injury is sustained, and not from the date that the injury is discovered for accidental injuries. In rejecting the plaintiff's argument that the 1991 revision to the Workers' Compensation Statute restored the law to its pre-1957 standard which allowed the limitations period to run from the date when the disability became apparent, the Court stated that "a statute of limitations which is triggered by an externally verifiable date, is a classic example of an objective, bright-line rule which fosters predictable outcomes in otherwise unpredictable situations." The Court also found that the two year limitations period was not unconstitutional since it was rationally related to the injury driven starting date of the

statute of limitations.

Time Limit for Bringing Suit on Homeowner's Policy: In *Rocco Luppino v. Vigilant Insurance Company*, CSA No. 1497, Sept. Term, 1995. Filed June 4, 1996, the Court of Special Appeals held that the time limit for filing suit against an insurer does not begin to run until a judgment is rendered and the insured becomes legally obligated to pay. Purchasers of the plaintiff's home sued him more than three years after the date of settlement, when they discovered extensive termite damage. Plaintiff had canceled his home-owner's policy the day the sale closed, and the insurance company said that it was not required to defend under the canceled policy. The Court of Special Appeals ruled, however, that Vigilant was liable for "the ultimate net loss" suffered by the insured, and that the time period for suing the insured did not begin to run until the jury found against him.

Tort Law/Auto Insurance: In *Nationwide Mutual Insurance Company v. Edward Seitz*, CSA No. 1477, Sept. Term, 1995. Filed June 3, 1996, the Court of Special Appeals held that where two insurers cover cars involved in a multi-car accident resulting in injuries to a third party, both may be held liable up to the amount of the higher policy's Personal Injury Protection (PIP) coverage limit. Where the Plaintiff was injured when two vehicles collided, one of which was covered by a Personal Injury Protection (PIP) policy in the amount of \$2,500, and the second of which was covered by a PIP policy in the amount of \$10,000.00, the Court held that both insurers were liable to the Plaintiff for PIP benefits not to exceed the higher policy. As the Plaintiff had been "injured" by both vehicles in the chain reaction collision, under § 543 (b)(1) of the Maryland Insurance Code, both insurers were obligated to pay PIP benefits.

Workers' Compensation/Benefits: In *Roland H. Bowen v. A.H. Smith*, CA No. 61, Sept. Term, 1994. Filed June 4, 1996, the Court of Appeals held that a recipient of Workers' Compensation is not disqualified because of his incarceration. The case arose on an appeal from summary judgment on the issue of whether or not an employer may terminate or suspend Temporary Total Disability benefits while the worker is in jail. The Court held that the Maryland Workers' Compensation Act has no indication that benefit recipients are disqualified because of incarceration and since the statute must be liberally construed to benefit injured workers, any such restriction must come explicitly from the General Assembly. Since the statute does not address the issue of whether Temporary Total Disability benefits may be suspended or terminated when the claimant is incarcerated, the Court ruled that the claimant was entitled to full Workers' Compensation benefits. The Court went on to state that the sole determinant for terminating Temporary Total Disability payments is whether or not the claimant continues to suffer from the disability and loss of wage earning capacity on which the original award was bottomed. The relevant factual question is whether the disability continues to impair wage earning capacity. If the claimant is no longer disabled, he is no longer entitled to benefits. The ruling places Maryland squarely within the majority of jurisdictions that have considered the issue and reached the same conclusion.

Business Law/Workers' Compensation Insurance: In *Commercial Union Insurance Company v. Harleysville Mutual Insurance Company, et al.*, CSA No. 1339, Sept. Term, 1995. Filed, May 7, 1996, the Court of Special Appeals held that a Workers' Compensation insurer is not required to cover claims mandated by states not covered by the insurance policy and not recoverable in the state

which coverage is provided. The case concerned an employee of a small Virginia construction company who was injured while working as a subcontractor on a job in Maryland, and the worker filed a Workers' Compensation claim in Maryland. The Virginia construction company's application for Workers' Compensation insurance requested coverage for Virginia only. Based on the application and the coverage issued as a result thereof, the Court of Special Appeals held that insurer should not be liable where employer had paid a premium for insurance coverage in only one state. The Court declined to create a situation in which employers are provided with "all states" Workers' Compensation coverage when they have only desired coverage and paid premiums for one state. As a result, the Court held that the insurance policy issued to the employer did not require the insurer to indemnify the employer for the amounts awarded to the claimant by the Maryland Workers' Compensation Commission.

Workers' Compensation: In *Joan A. Barnes v. Children's Hospital*, CSA No. 729, Sept. Term, 1995. Filed May 1, 1996, the Court of Special Appeals held that an employee called to work on a Saturday was on a special mission, and therefore, could collect Workmens' Compensation payments from her employer, where the time, nature and urgency of the journey were of such characters to make the journey itself a substantial part of the service rendered. The Court found that a journey may be a special mission even where the task performed at the work place is a regular part of the employee's duty. The Court stated that the special mission rule contemplates situations in which either the journey or the mission is special, not simply where the task to be performed at the workplace is special. When an employee makes a special journey to the place of employment at the request of the employer, the employee is acting in the course of his employment even if the tasks that he is expected to do are completely normal or regular. Applying the law to the instant case, the Court held that since the claimant was in the process of dropping her family off at home in order to attend to her business obligations after receiving an emergency call from her employer, that her injury was reasonably related to her business interests. The Court stated "but for the request to report from work, she would have not attempted to take her family home at that time."

Lead Paint Poisoning: In *Octavia Brown v. Carel Wheeler*, CSA No. 1301, Sept. Term, 1995. Filed May 6, 1996, the Court of Special Appeals declined to adopt a standard holding all landlords renting older homes to automatic knowledge or reason to know that their properties are contaminated with a toxic substance. The Court set out a standard of proof which a plaintiff must meet in order to survive a landlord's motion for summary judgment in lead paint poisoning cases. The ruling involved a landlord who only rented one property, and the Court affirmed the Court of Special Appeals' holding that the case would not proceed where the plaintiff could not produce evidence that a landlord knew three things, namely, that lead paint existed on the premises at the time of exposure, that lead paint generally exists in older buildings, and that deteriorated lead paint is a hazard. In alternative to the above three prong test, a plaintiff may show that the defendant has superior knowledge of such matters as is normally held by a person in the business of renting a property. The Court noted that in lead paint poisoning cases based on negligence, the plaintiff must show evidence that would prove that the landlord had actual knowledge or reason to know of chipping paint, that the condition of the paint was hazardous, and that the landlord was given an opportunity to correct the problem.

Americans With Disabilities: In *Stephen L. Kiess v. D&H Distributing Company*, U.S. District Court No. S95-2868, April 25, 1996, the United States District Court gave a narrow reading to the term "disability" as it applies to the Americans with Disabilities Act (ADA). The Court held that a kitchen installer with a heart condition which prevented him from lifting heavy objects, was not disabled as the term "disability" applies in the ADA, since lifting heavy objects was essential to his installer position, and no accommodation would allow him to perform such lifting. Further, the Court stated that the company was not required to shift work responsibilities or create a position to accommodate him. Significantly, the Court stated that "not every ailment is a qualifying disability under the Americans with Disabilities Act." In finding that the plaintiff's heart condition restricted only heavy lifting, rather than the major activities of his life, the Court found that his "condition" was not sufficient to constitute a disability for ADA purposes. "The inability to perform a particular job, such as plaintiff's kitchen installing job, does not amount to a disqualifying disability sufficient to make out a *prima facie* case under the ADA." Otherwise, everyone with a Workers' Compensation case that kept them from returning to work would be "disabled" regardless of the other criteria for disability under the ADA. The Court held that there was no compunction to change the plaintiff's job from a kitchen installer to a finisher or push off all of the heavy work inherent in plaintiff's job to plaintiff's fellow workers, and as there were no vacant positions for which the plaintiff was qualified, the employer was not required to create a job to suit the plaintiff's individual needs.

Civil Procedure/Service of Process: In *Maryland Firemen's Association v. John Chaves, President Firefighters' Association of American*, U.S. District Court No. 96-2, April 25, 1996, the District Court of Maryland held that a defendant who received inadequate service of process should not be subject to a default judgment entered in favor of the plaintiff. The Court held that the plaintiff was not entitled to a default judgment because, under the Federal Rules, service of process may be performed "pursuant to the law of the state in which the District Court is located." Maryland law requires a Complaint and Summons to be sent by Certified, not First Class, mail.

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