

Recent Developments in the Law

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Workers' Compensation Law: The Maryland Court of Appeals, in *Montgomery County, Maryland v. Pamela J. Wade*, held that an off-duty police officer who sustained injuries in a collision while driving her police car on a personal errand, is entitled to workers' compensation. The highest Maryland court ruled that because Montgomery County encouraged off-duty officers to use their patrol vehicles to create a more visible presence, the officer's injuries still arose from the course of her employment even though she was transporting her grandmother, a personal errand, at the time of the crash. Agreeing with the lower courts that had decided in the officer's favor, the Court of Appeals noted that there are strict restrictions on the use of the patrol vehicles. Officers using the vehicles, even when off-duty, are required to monitor the police radio, carry a handgun, handcuffs, credentials, and make certain traffic stops.

Workers' Compensation Law: In *Mary F. Hundt v. Mayor and City Council of Baltimore*, the Maryland Court of Appeals affirmed the summary judgment of the circuit court that a Baltimore City School volunteer aide who received no salary was not entitled to weekly workers' compensation benefits. The aide, Mary Hundt, sustained an injury to her left knee when she slipped on the cafeteria floor. The Court reasoned that the aide was a covered employee under Maryland's Workers' Compensation Law and was entitled to payment of medical expenses arising from the injury. However, she was not entitled to weekly monetary benefits because, as a volunteer, she had no average weekly wage.

Workers' Compensation Law: In *Doreen Kay Means v. Baltimore County, Maryland*, the Maryland Court of Appeals ruled that workers who suffer from post-traumatic stress disorder (PTSD) unaccompanied by physical disease may be eligible for workers' compensation benefits. Doreen Kay Means, a paramedic for Baltimore County, took time off of work when she developed PTSD after responding to several gruesome fatal motor vehicle accident scenes. The Court noted that so long as the condition is contracted as a result of his or her employment and causes the employee to become incapacitated, claimants can be compensated for the time lost under the Maryland Workers' Compensation Act.

Qualified Immunity: The Maryland Court of Special Appeals, in *Jack W. Lowery v. Patricia A. Lowery*, determined that an award, to a divorcing spouse, of a lump sum as a portion of her husband's workers' compensation permanent-partial disability benefits, would have been proper had there been sufficient evidence regarding the

Insurance Law: The Maryland Court of Special Appeals, in *Ronald Wayne Hastings et us. v. William H. Knott et al.*, held that both statutory employees and actual employees are treated as co-employees for the purpose of the co-employee exception to the liability coverage in a contractor's general commercial liability insurance policy.

amount of workers' compensation award that qualified as marital property. Jack W. Lowery, an employee of Kelly Springfield Tire Co. for 28 years, was injured in 1976 and received compensation awards from 1981 to 1987 for permanent-partial disability. Married in 1982, Mr. Lowery claimed that his workers compensation was not marital property since it sprang from an injury predating his marriage. The Court of Special Appeals, however, focused on the purpose of the benefits which is to compensate for loss earning capacity during the marriage, and therefore, constitutes marital property, even if related to an injury suffered prior to marriage. Finding that the evidence presented was insufficient to allow the court to determine the proper amount, the case was remanded for further proceedings.

Ronald Wayne Hastings was employed by Glen Arm Masonry, which was subcontracted to do work for Williams H. Knott, Inc. Knott, Inc. also hired temporary workers. Hastings was injured when one of the temporary workers drove a backhoe into a scaffold on which Hastings was standing. Knott had a general commercial liability insurance policy with United States Fidelity and Guaranty that covered its own employees, but had a provision that excluded coverage of negligent acts committed by co-employees. In construing the policy exception, the Court of Special Appeals ruled that a temporary worker is not an insured under the policy and therefore, Hastings could not recover from the insurance company.

Insurance Law: In *Harford Mutual Insurance v. Woodfin Equities Corp. et al.*, the Maryland Court of Appeals held that after a plaintiff has obtained a judgment in a tort action, he or she may sue the liability insurer that provides coverage for the defendant. The appellee, Harford Mutual Insurance Company, argued that an injured party should not be able to bring a declaratory judgment or other action against the insurer until a judgment has been obtained and the judgment has been returned unsatisfied after execution. However, the Court of Appeals found that this was not necessary.

Insurance Law: In *Aetna Insurance Co. v. Albert G. Aaron*, the Maryland Court of Special Appeals interpreted the terms of a homeowner's insurance policy as requiring the insurer to defend the policyholder in a suit against him for costs undertaken to prevent further damage to neighboring property. A condominium association sued the owner of one of the building's condominium units for the cost of repairs and preventive measures associated with a water leak that emanated from his apartment. The owner submitted the claim to his insurance company, Aetna Insurance, which denied coverage. Relying on the language in the policy which allegedly provided protection for a suit for damages instituted because of property damage, the Court of Special Appeals determined that the policy extended to expenses incurred to remedy a hazardous condition on the insured's property for

Insurance Law: In *Baltimore Gas and Electric v. Commercial Union Insurance Company et al.*, the Maryland Court of Special Appeals held that an insurer could not be compelled to defend based on covered claims, when the plaintiffs' revised allegations meant that such claims would no longer be generated at trial. In the suit which precipitated this case, the plaintiffs, Michael W. And Kathleen Corradetti, filed a negligence lawsuit against BGE, Ferguson Trenching Company, and others after their car fell into a utility splicing pit. After completing some initial discovery, the plaintiffs learned that BGE was the only negligent party and dismissed the other defendants. Based on the plaintiff's revised allegations, Commercial, the insurance company retained by Ferguson Trenching Company, refused to indemnify BGE for the judgment ultimately obtained by Corradetti.

the purpose of preventing imminent and further harm to neighboring property. The Court further determined that an exclusion which limited coverage to property owned by the insured, did not bar recovery in the case.

Ferguson was a utility subcontractor hired by BGE. The contract entered into by the parties required Ferguson to provide coverage for potential claims by third parties for work done by Ferguson for BGE, but did not require Ferguson to provide BGE with insurance coverage for claims brought against BGE for BGE's own negligence.

Insurance Law: In *Byron C. Bailer et al v. Erie Insurance Exchange*, the Maryland Court of Appeals found that when there is an ambiguity in policy coverage, an insurance contract will be construed against the insurer. The insureds, Byron and Victoria Bailer, called upon their insurance company, Erie Insurance Exchange, to defend and indemnify them when they were sued for invasion of privacy. Ordinarily torts such as malicious prosecution, slander, and invasion of privacy are not covered under basic homeowner's policies because they generally don't involve bodily injury or the damages were intended by the insured. However, the catastrophe liability policy upon which the Bailers asserted coverage, enlarged the coverage from bodily injury to personal injury, and defined the term as covering such torts as invasion of privacy. The Maryland Court of Appeals determined that there was an intention on the part of the insurer to provide some insurance liability coverage for claims based on invasion of privacy, and therefore Erie was obligated to defend and indemnify.

Indemnity/Contribution: In *Sheldon Lerman v. Kerry Heemann*, the Maryland Court of Special Appeals ruled that in a claim for contribution brought by a defendant against a codefendant, the trial court may simply grant the judgment against the codefendant in a post-trial motion, rather than require that a separate cross-claim be filed. This ruling was decided in the context of a medical malpractice case in which a doctor, Dr. Heeman, asked the court, in a post-trial motion, to order contribution against his codefendant, Dr. Lerman. The court granted the order. Dr. Lerman argued on appeal that the decision was improper because Dr. Heeman had failed to file a cross-claim and also failed to file a contribution claim with the Health Claims Arbitration Office. The Court of Appeals determined, however, that such actions were unnecessary.

Contract Law: In *Noonan v. Williams*, the District of Columbia Court of Appeals held that a general release that stated it served to release not only two other named tortfeasors, but "all other persons", discharged only those joint tortfeasors that the parties intended to release. Construing the release in accordance with established rules of contract interpretation, the Court regarded the parties' intentions as paramount. If the terms of the release are not clear on the face of the document itself, extrinsic evidence should be used to determine the parties' intent. The Court found that the general release in this case, when read in the context of the entire release, was ambiguous because it could be read to release all possible tortfeasors involved in the accident, or as only to release all other persons, firms, associations or partnerships connected to or succeeding to the interests of the named releasees. Therefore, the trial court should have considered extrinsic evidence to determine the parties' intent.

Civil Procedure/Contribution: In *District of Columbia v. Washington Hospital Center*, the District of Columbia sued Washington Hospital Center in an attempt to collect a contributable portion of the settlement payment made to Sheila Bringier for injuries she sustained when struck by a motor vehicle during a high speed chase with a Metropolitan police officer. The Washington Hospital Center was not a party to the original suit, and the District of Columbia Court of Appeals found that the settlement of the tort action served to extinguish the liability upon which any contribution action would be based. Consequently, the settling tortfeasor, the District of Columbia, could not seek contribution even though the District claimed that Washington Hospital Center caused part of the damage.

Tort Law: In *Ronald Lee Broadwater Sr. et al v. Matilda Woodward Dorsey et vir.*, the Maryland Court of Appeals found that parents, Dr. and Mrs. Broadwater Sr., were not legally responsible for an automobile accident caused by their adult son. The victims based their claim on the theory of negligent entrustment and offered as support the fact that the Broadwaters gave their son a Mazda RX-7, knowing he had a history of reckless driving. However, the Court held "that the doctrine of negligent entrustment is generally limited to those situations in which the chattel is under the control of the supplier at the time of the accident." The Court concluded that the Broadwaters had no right to control the RX-7 because their son was an adult, and they had relinquished title to the car.

Civil Procedure/Claim Preclusion: In *Molovinsky v. The Monterey Cooperative, Inc., et al*, the District of Columbia Court of Appeals held that, based on the theory of res judicata, the settlement of a small claims suit, barred the plaintiff from bringing a civil action based on the same transaction. The appellant, Gale S. Molovinsky, argued that res judicata was inapplicable because the District of Columbia's Small Claims Branch did not have general jurisdiction over the subsequent claims. The Court reasoned that res judicata is premised on granting the aggrieved party one opportunity to allege the wrong. The plaintiff has the choice to bring the action in a court of limited jurisdiction or more expansive jurisdiction. Consequently, any breach of contract action, arising out of the original circumstances, was extinguished when Molovinsky settled the claim with Monterey Cooperative Inc. and the suit was dismissed with prejudice.

Evidence/Expert Testimony: In *Robert Goren, et al. v. United States Fire Insurance Co., et al.*, the Maryland Court of Special Appeals held that a state trooper, who was not an expert in accident reconstruction, should not have been questioned as a traffic expert. Barbara Goren was involved in a traffic accident, and State Trooper Charles Robbins was the officer who investigated the scene. After describing the condition of the cars involved and the tire marks left on the road, the officer was asked on cross-examination to give his

Qualified Immunity: In *Crawford-El v. Britton, et al.*, the U.S. Court of Appeals for the D.C. Circuit held that when a government official is facing a damage action for allegedly committing a constitutional tort and where the constitutionality of the official's acts turn on his motive, that official may obtain a summary judgment resolution of a qualified immunity issue, before the plaintiff engages in discovery on the issue. In addition, unless the plaintiff offers clear and convincing evidence on the state of mind issue at summary

interpretation of some aspects of the accident. The Court found that the officer, who was not qualified as an expert in accident reconstruction, should not have been permitted to answer those questions.

Evidence/Expert Testimony: In *Raynor, et al. v. Merrell Pharmaceuticals, Inc.*, the U.S. Court of Appeals for the D.C. Circuit, found that a district court judge did not abuse his discretion when he deemed the plaintiff's expert testimony on chemical in vitro and in vivo studies inadmissible. The Court determined that the studies were not capable of proving, on their face, that the defendant, Merrell Pharmaceuticals, Inc.'s, anti-nausea drug caused the plaintiff's birth defects because there was overwhelming contradictory epidemiological evidence. Relying on the factors announced by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the Court found that the evidence was inadmissible under Federal Rule of Evidence 702. Rule 702 states that an expert may testify if the "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Under *Daubert*, when determining whether the expert's evidence is "scientific knowledge", the following must be considered: (1) whether the theory or technique can be (or has been) tested; (2) whether the theory or technique has been subject to peer review and publication; (3) the known or potential rate of error of the methodology; and (4) the general acceptance of the methodology. Finally, the court must decide if the expert testimony will "assist the trier of fact to understand or determine a fact in issue."

The Court found several problems with the plaintiff's proffered expert testimony, including the fact that none of the plaintiff's experts has published their conclusions regarding the defendant's drug, the studies had not been subject to peer review, and testing problems with the experts' methodology.

judgment and trial, judgment or directed verdict should be granted for the defendant.

The plaintiff in the case is a prisoner at the District of Columbia correctional system. He alleged that the defendant, a correctional officer, and the District of Columbia, violated his constitutional right of access to the courts when they misdelivered several boxes containing his legal documents, clothes and other personal items. The officer moved for dismissal and for summary judgment based on the defense of qualified immunity, and the district court, under a heightened pleading review, determined that the plaintiff's complaint was lacking. One of the several constitutional attacks in the defendant's complaint was that the misdelivery was in retaliation for his communications with the press and therefore violated his First Amendment rights. The U.S. Court of Appeals for the D.C. Circuit decided that this claim should be reviewed by the court *en banc*.

The Court noted that as stated in *Harlow v. Fitzgerald*, there is a concern about exposing officials to debilitating discovery and therefore, prior to discovery, the plaintiff is required to offer specific, non-conclusory assertions of evidence, in affidavits or other materials, from which a fact finder could infer the forbidden motive. In addition, there is a heightened standard of proof requirement. The summary judgment or directed verdict should be granted unless the plaintiff offers clear and convincing evidence on the state of mind issue.



