

# Recent Developments in the Law

---

**Vol. No. XVI**

July 6, 1998

**Negligence/Pedestrian:** In *Green v. United States of America*, filed on January 14, 1998, the U.S. District Court for D.C. found that the defendant was not liable to the pedestrian that he struck. A policeman riding his motorcycle in Anacostia Park struck a pedestrian. The plaintiff claims that the police officer's negligent driving was the cause of his injuries. The defendant, Officer Williams, claims that he was not negligent in the operation of his vehicle and that the plaintiff was contributorily negligent and assumed the risk. The court found that the officer was not driving negligently. The plaintiff was also found to be contributorily negligent and assumed the risk making him unable to recover damages in any instance. The plaintiff violated several District regulations that were designed to protect pedestrians from traffic and acted in ways that were conducive to injury. The Court found for the defendant.

**Insurance:** In *Potomac Residence Club v. Woodley Housing Corporation, etc.*, filed on December 4, 1997, the D.C. Court of Appeals remanded the case regarding reasonableness of award and denial of prejudgment interest. Potomac Residence Club had paid Western World Insurance Company to cover them in three areas of liability: Owners', Landlords' and Tenants' liability, Personal Injury liability, and Professional liability. The policy also included representation for Potomac Residence with reference to their coverage. Western World had one exclusion clause that engulfed the area of sexual actions. On December 19, 1991, a complaint was issued against Potomac Residence Club in the Superior Court. The complaint included ten counts one of which alleged that the defendant had sexual contact with Mrs. Zeeder. Potomac Residence was denied coverage and representation by Western World in accordance with the sexual actions exclusion. Potomac Residence sought pro bono representation, as they were unable to afford legal representation. They filed a declaratory judgment against Western World. The court found that

Western World should have provided representation for Potomac Residence as sexual actions was only one of the ten complaints. Western World was ordered to pay the attorneys working pro bono for Potomac the sum of \$273,306.37 for legal expenses incurred. They were denied prejudgment interest with no explanation from the trial judge. The goal of prejudgment interest is threefold, to provide full and fair compensation to plaintiffs, to encourage settlements, and to discourage delay by defendants. Potomac Residence claims that to award the interest would fulfill all three of these goals. The D.C. Court of Appeals remands the case to the lower court for further proceedings in reference to the reasonableness of the amount awarded to the pro bono attorneys and the appropriateness of the denial of prejudgment interest.

**Malpractice:** In *Edward W. Roberts Sr. v. Paul R. Fleury, M.D. et al.*, filed Dec. 24, 1997, the plaintiff, Edward W. Roberts Sr. filed suit against Dr. Paul R. Fleury for medical malpractice after Mr. Roberts' wife died from inflammatory breast cancer. The case went to a jury, however the jury was hopelessly deadlocked and was dismissed and a mistrial was declared. Judge Frederic N. Smalkin then held as a matter of law that the Defendant, Dr. Paul R. Fleury was entitled to a judgment in his favor, and the issue of Dr. Fleury's breach of a standard of care, should never have made it to the jury in the first place. The Court noted that there was no evidence that Dr. Fleury had misread the lab reports and to hold otherwise would be an "intolerable and unsustainable" result.

**Negligence:** In *King v. Pagliaro Brothers Stone Company et al.*, filed Dec. 18, 1997, the D.C. Court of Appeals held that the trial court erred in directing a verdict in favor of the defendant in an automobile accident case. In this rear end collision accident case, the trial court directed the verdict based on the plaintiff's failure to introduce traffic regulations in order to establish a standard of care, present specific evidence concerning the speed of the defendant's truck, and failure to establish a direct causal relationship between the defendant's alleged talking on the phone and negligence. In overruling the lower court, the appeals court noted that no D.C. case requires that traffic regulations be introduced into evidence in order to establish negligence, even though it is often done. In addition, a trial court should not direct a verdict if it is possible to derive conflicting inferences from the evidence, and should be entered only in extreme circumstances. In this case, based on the testimony from the passenger/plaintiff that she observed the Defendant rapidly approaching the vehicle before it hit, and that she observed the driver talking on the phone, a reasonable jury could find that the driver acted negligently. The case was remanded to the lower court.

**Product Liability/ Absolute Standard:** In *Binakonsky v. Ford Motor Company*, filed Jan 5, 1998, the U.S. Court of Appeals for the 4th Circuit reversed the trial court's grant of a summary judgment motion in favor of Ford Motor Company. The case was centered around a 1992 automobile accident involving a 1988 Ford Econoline van. The driver, David Binakonsky was driving the vehicle when he ran off the road and hit a tree which caused the van's engine to be pushed into the passenger compartment, trapping Mr. Binakonsky when an intense gasoline fire ignited and causing him to burn to death. Mr. Binakonsky's widow and children sued Ford Motor Company alleging that the vehicle had a design defect under strict liability laws in Maryland. Ford Motor Company filed a summary judgment motion, and the trial judge use a reasonableness standard to assess whether the alleged defect rendered the van unreasonably dangerous to the consumer under products liability law. In reversing and remanding the trial court's decision, the 4th Circuit held that the plaintiffs had "produced sufficient evidence to show a likelihood that the fuel delivery system in the event of an accident was unreasonably dangerous and caused serious injury", and therefore the issue should have been left to a jury.

**Negligence/Notice of Danger:** In *Shelley I. Moore v. Sam's Car Wash*, filed January 21, 1998, the Maryland Court of Special Appeals ruled that the trial court correctly granted summary judgement to the defendant who had no notice of danger. Shelley Moore slipped and fell at the vacuum island in the rear of Sam's Car Wash. Moore says there was a dark brownish, reddish looking substance on the ground. The car wash does not have attendants on the premises at all times, but the manager and his assistant testified to cleaning the car wash with a specific solution that removes oil and grease on a daily basis. The Court found that there was no evidence to suggest that Sam's Car Wash had any knowledge of substances that could be a potential danger on the premises. The trial court was correct in granting summary judgement to Sam's Car Wash because no evidence was presented to show accumulation of slippery substances.

**Negligence/Wrongful death:** In *Ford Motor Company v. Nollie P. Wood et al.*, filed January 8, 1997, the Maryland Court of Special Appeals ruled that there was insufficient evidence to support a negligence verdict against Ford Motor Company. Nollie Wood was an employee at a garage where he was exposed to asbestos dust on a daily basis. The dust was a consequence of the replacement of

brake and clutch car parts. The garage serviced mainly Ford Motor vehicles. The widow of Nollie Wood sued Ford for wrongful death and was awarded a generous amount in damages. Ford appealed and the Maryland Court of Special Appeals reversed the decision finding that a vehicle manufacturer does not have a duty to warn the public of danger in products that it was not responsible for fabricating or distributing.

**Insurance/Uninsured Motorist Coverage:** In *Matta v. GEICO*, filed January 28, 1998, the Maryland Court of Special Appeals affirmed the decision of the lower court which held that a victim of a car accident owned and insured by a family member was not eligible to collect from uninsured motorists coverage. In the accident on October 31, 1995, Harpreet Matta was the passenger of the car driven by her brother. As a consequence of this accident, Harpreet had to have a portion of her foot amputated and incurred medical expenses in the range of \$60,000. GEICO insurance covered \$20,000 (limited by the standard household exception) according to Matta's liability policy. Harpreet claimed that she should receive uninsured motorist coverage in addition to the coverage from her family's policy. The Circuit Court granted summary judgement in favor of GEICO. The Maryland Court of Special Appeals affirmed this ruling due to the fact that her brother was not driving an uninsured vehicle and GEICO abided by the state's minimum coverage law. The GEICO policy that the Mattas signed excluded family members from any uninsured motorist coverage.

**Evidence/Physician Statements:** In *Low v. State*, filed January 29, 1998, the Maryland Court of Special Appeals found that statements from a sexually abused child to an examining physician were inadmissible as hearsay due to the fact the patient was not aware that the physician could provide treatment in the future. The 12-year old victim was examined by Dr. Narita Estampador-Ulep who is a child abuse expert as well as a pediatrician. The physician noted signs of sexual trauma to the child. The testimony of the doctor was inadmissible due to the fact that there was no notice of any future contact with the patient. When the patient was dismissed from the doctor's care after the first examination, the follow-up instructions did not list Dr. Estampador-Ulep as an option for follow-up treatment. The statements the child made to the doctor are not trustworthy considering the visit appeared to be made for purposes of testimony only and not ongoing treatment.

**Torts/Negligent Entrustment:** In *Robb V. Wancowicz*, filed on February 3, 1998, the Maryland Court of Special Appeals ruled that Peter Wancowicz was not liable for negligent entrustment when he attached an expired tag to his daughter's vehicle. The daughter, Carol Lunner, was an adult who was involved in a head-on collision with Richard Robb. Both parties to the accident received serious injuries. Ms. Lunner was issued a default order for failure to file an answer to Robb's complaint. Robb then added Wancowicz to his complaint stating that he was party by negligent entrustment and negligence. Wancowicz was granted summary judgement by the court. The Maryland Court of Special Appeals affirmed this ruling because the father had no control over his adult daughter's actions and they could not place a duty of care upon him for the safe driving of another adult.

**Premises Liability/Lead Poisoning:** In *Brown v. Dermer*, filed February 5, 1998, the Maryland Court of Special Appeals affirmed the decision of the Circuit Court which granted summary judgement to the landlords of a property that contained deteriorated lead paint. The Dermers own

rental properties in Baltimore City. Clayton and Crystal Brown who are small children were tenants of one of these properties and were observed to have high lead levels in their blood. The City Circuit Court granted summary judgement in favor of the Dermers. The Maryland Court of Special Appeals affirmed the lower court's holding stating that although the Dermers knew of deteriorated paint, they were not aware that this paint contained lead. There was no evidence that the Dermers had specific knowledge of the problem even if the knowledge of lead paint hazards were widespread in the 1980s.

**Negligence/Liability:** In Moura v. Randall, filed February 9, 1998, the Maryland Court of Special Appeals reversed the decision of the Circuit Court that granted summary judgement against the defendant whose dog injured a child. Warren Randall was walking his Rottweiler without a leash. The dog ran off to chase another dog and consequently attacked four year old Alex Moura. The Mouras sued Randall on the basis of negligence and strict liability. Summary judgement was granted in favor of the Mouras. The Maryland Court of Appeals noted that the knowledge of the animal's propensities by the owner is relevant in determining the type and amount of control the owner exhibits. It must also be established what type of control is reasonable for the owner to exercise. The summary judgement was incorrectly applied because there is factual dispute over the amount of control Randall should have known to use over his dog and what would constitute reasonable using that knowledge.

**Negligence/Liability of Public Utility:** In Baltimore Gas and Electric Company v. Flippo, filed February 18, 1998, the Maryland Court of Appeals affirmed the decision of the lower courts which ruled that BGE was negligent. A child was seriously injured when climbing a tree where he contacted BGE's high voltage wire. BGE claimed that the child was a trespasser in reference to their high voltage wire. The child had permission from the landowners to be climbing the tree, so the Court found that the child was a licensee by invitation. The Court held that a jury could reasonably find that BGE had a duty to trim this particular tree, but not a blanket duty to trim every tree. BGE further asserted that the child was contributorily negligent. The Court found that the child was not contributorily negligent as a matter of law. A jury found for the Flippo family and awarded them \$487,516.

**Negligence:** In Azer v. Groce, filed February 23, 1998, the Maryland Court of Special Appeals ruled in favor of Dr. Azer reversing the decision of the lower court which granted David Groce a sum of \$1,450,000. David Groce was an aspiring bodybuilder. During an attempt to bench press over 400 pounds in February 1991, Groce tore a major chest muscle. Dr. Samir N. Azer advised Groce that the injury did not require surgery and to keep his shoulder immobilized for six weeks. Groce noticed asymmetry in his chest and decided to pursue surgery in effort to continue his bodybuilding career. The surgery did not yield enough improvement to continue professional bodybuilding. In his suit against Dr. Azer, a jury found for Groce. The Court of Special Appeals found that there was not enough evidence to show Dr. Azer liable to Groce in advising against surgery and reversed the decision. Groce intends to appeal this decision.