

Recent Developments in the Law

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Insurance: In *Flocco v. State Farm Mutual Automobile Insurance Company, et al.*, filed on December 19, 1997, the District of Columbia Superior Court dismissed the charges brought by the Plaintiff. Thomas V. Flocco filed suit against State Farm Mutual, Edward Rust and Vincent Trosino, and Robert Bennett and President Clinton. President Clinton was issued a personal liability umbrella policy from State Farm that included damages such as personal injury, libel, slander, and defamation. Included in the State Farm policy protection was defense of law suits involving the above covered issues. In accordance with the policy issued to President Clinton, State Farm provided defense in the suit that Paula Jones filed against him. All of the defendants filed motions to dismiss the charges filed by Flocco, and all three motions were granted. Flocco brought the charge of conversion against President Clinton and Robert Bennett. The law defines conversion as the "unlawful exercise of ownership, dominion or control over the personal property of another in denial or repudiation of his rights thereto." Neither Clinton nor Bennett can be charged with dominion or control of another's property when they simply made a claim on a valid insurance policy and that claim was granted by the insurance company. Rust and Trosino, both high ranking executives of State Farm, were accused of conversion by arranging for transaction of funds for the legal suit. They had their charges of conversion dismissed on the grounds that they could not be included in D.C.'s long arm statute. They never made any transactions within D.C. and, therefore, remained outside of the jurisdiction. The charges against State Farm were dismissed due to an incomplete complaint. Flocco filed a double-derivative lawsuit against State Farm Mutual but not its subsidiary company State Farm Fire and Casualty Company. Illinois law clearly states that in a double-derivative lawsuit both the parent and subsidiary company must be made party to the suit. Illinois law also states that formal demands must be made to the board of both parent and subsidiary companies before a double-derivative suit can be filed. The Plaintiff failed to adhere to these two prerequisites; therefore, the Court granted the defendant's motion for dismissal.

Medical Malpractice: In *Woldeamanuel v. Georgetown University Hospital*, filed on December 30, 1998, the District of Columbia Court of Appeals affirmed summary judgement granted in favor of Georgetown University Hospital. Woldeamanuel had a skin condition which was diagnosed differently by a variety of doctors. A doctor employed at Georgetown University Hospital prescribed a steroid cream as treatment for Woldeamanuel's condition. Half a year later, another doctor at the same hospital prescribed another steroid cream as Woldeamanuel's treatment. The Plaintiff later went to another facility where she received treatment for her skin condition which did not involve steroid creams. She then filed suit against Georgetown University Hospital for medical malpractice. In medical malpractice cases, the Plaintiff must prove a standard of care to be met by the Defendant, a deviation of that standard, and a relationship between the departure of the standard and an injury to the Plaintiff. Woldeamanuel never provided an explanation of the standard of care the Hospital should have given nor an

explanation of how any standard was breached. Due to the inability of the Plaintiff to fulfill the burden of proof, the D.C. Court of Appeals affirmed summary judgement for the Defendant.

Negligence: In *Smith v. Washington Sheraton Corporation*, filed on February 10, 1998, the United States Court of Appeals for the District of Columbia Circuit corrected the holdings of the D.C. District Court. Mary Jo Smith fell off a ramp that connected the Washington Sheraton Hotel's garage to its lobby. As a result of her fall, she acquired head injuries. She filed a complaint against ITT Sheraton Corporation; Washington Sheraton Corporation; Sheraton Operating Corporation; Woodly Road Associates, Inc.; John Hancock Mutual Life Insurance Company; and Sumitomo Life Realty. All of the Defendants were granted judgment as a matter of law by the Washington D.C. District Court except Washington Sheraton Corporation. The jury of the trial court found in favor of the plaintiff and awarded her \$175,000. Smith claimed that the lower court erred in excusing Sheraton Operating Corporation. In the appellate review of the proceedings, error was found in the initial holding. First, the Court confused the roles of Sheraton Operating Corporation and Washington Sheraton Corporation due to their similarity in name. The only evidence brought forward pertaining to ownership referenced Sheraton Operating Corporation, yet the Washington Sheraton Corporation was held as the sole defendant. The Court must have meant for Sheraton Operating to remain as the defendant considering the only ownership evidence pointed to them. For this reason, the appellate court reversed the holding of the lower court that freed Sheraton Operating Corporation from trial and remanded the case for a new trial. The second error referenced Washington Sheraton Corporation. Although the plaintiff brought forward no evidence in reference to Washington Sheraton's ownership of the property, the corporation at no time in the pre-trial proceedings denied or disputed ownership. The burden of proof concerning ownership of property in a premises liability suit lies with the plaintiff, unless the defendant neglects to raise the defense of non-ownership. Therefore, in the case before us, the defendant waived his objection on grounds of ownership by not stating the contrary in the pre-trial hearing. For this reason, the U.S. Court of Appeals remanded the case to the lower court for a new trial concerning Washington Sheraton Corporation. The U.S. Court of Appeals also ordered new trials for Hancock Mutual Life Insurance, Sumitomo Life Realty, and Woodly Road Associates as a consequence of their silence pertaining to ownership in the pre-trial proceedings. The appellate Court affirmed the granting of the motion for ITT Sheraton Corporation because a corporation is not liable for harm that occurred on the property of one of its subsidiaries. At trial, the plaintiff made no effort to pierce the corporate veil. Only the holding for ITT Sheraton stands. The other five Defendant companies are remanded to the lower court for new trials.

Limitation of Actions: In *Cevenni v. Archbishop of Washington, Etc.*, filed on February 12, 1998, the District of Columbia Court of Appeals dismissed the case against the Archbishop of Washington due to the expiration of the time allotted by the statute of limitations. The Archbishop of Washington hired and supervised a priest, Father Schaefer, that had allegedly sexually molested the Plaintiff. Cevenni later filed suit against the Archbishop accusing him of negligent hiring and supervision, fraud, negligent infliction of emotional distress, and intentional infliction of emotional distress. For the purposes of the District of Columbia, a claim begins its time limitations when the Plaintiff knows of an injury, the cause of injury, and has some evidence of wrongdoing pertaining to the injury. The Plaintiff was said to have been on inquiry notice (knowledge of wrongdoing that could have been acquired through reasonable investigation) since 1991. Cevenni filed his suit in 1995 which is after the statute of limitations

has expired. Cevenni argued that he was not aware of the full impact of the harm caused to him. However, it is not relevant if the Plaintiff has knowledge of the full extent of injury only that he knows of some injury, cause, and some evidence of wrongdoing. Cevenni knew of mental and physical abuse caused by sexual molestation by Father Schaefer before 1991. It was after that time that he realized the force that these events had on his life. Fraudulent concealment could not be proven on the part of the Archbishop; therefore, the interval for filing suit began in 1991. According to this information the Court ruled in favor of summary judgement for the Archbishop of Washington and the D.C. Court of Appeals affirmed their ruling.

Employment Law: In *Mandsager v. Jaquith, et al.*, filed on February 19, 1998, the District of Columbia Court of Appeals ruled in favor of the summary judgement that dismissed the wrongful termination charges filed against Jaquith. Mandsager claimed that she had been wrongfully terminated from her job when she refused to break the law. She was instructed to begin preparation of a mailing list which included Maryland and Virginia locations. The company, PECEI, was not registered to mail in those states and to send a mailing would violate the law. She notified Jaquith of the situation. He told her to proceed with the preparations. Her termination was a result of Jaquith's refusal to retract the instruction and the conversation that followed. Mandsager's complaint was that she was fired for refusing to break the law. The court, however, did not see the situation as a wrongful termination. Mandsager was only asked to continue preparation of the mailing list. This act in itself was not illegal and did not guarantee the follow through of an illegal act. The possibility of obtaining permits before mailing would have legalized the entire ordeal. The Court held that the Plaintiff was not given the mutually exclusive choices of breaking the law or losing her job. Thus, the Court granted summary judgement in favor of Jaquith. The D.C. Court of Appeals affirmed the holding of the lower court.

Workers Compensation: In *Stone v. District of Columbia Department of Employment Services* filed on February 26, 1998, the D.C. Court of Appeals dismissed Stone's petition to hear her worker's compensation claim due to the fact it exceeded the time limitations for filing. On August 7, 1996, the District of Columbia's Department of Employment Services denied Stone's request for workers compensation due to an injury. On August 13, 1996, Stone appealed this decision to the Office of the Director of the Department of Employment Services. The guidelines for review specify that if the director has not rendered a decision regarding the initial department decision within 45 days, the initial decision stands as final. The rules governing the District of Columbia Court of Appeals state that any agency hearing must be filed within 30 days of the agency's final decision. Both parties agreed that the Court of Appeals petition was filed after the 30-day time period that began when the director's 45 day period ended. Therefore, the D.C. Court of Appeals dismissed Stone's petition to hear her workers compensation claim.

Civil Procedure: In *Tina Schillinberg v. Bay Shore Development Corp., et al.*, filed on February 26, 1998, the Maryland Court of Special Appeals asserted that for personal injury cases the beginning of the time period for the statute of limitations is considered the day after the date of injury. Tina Schillinberg was injured on a go-cart track in Ocean City on June 6, 1993. She filed a complaint on June 6, 1996, exactly three years from the date of the accident. The Circuit Court

of Worcester County granted the defense's motion to dismiss on the grounds that the statute of limitations had expired. Schillinberg appealed. The Maryland Court of Special Appeals remanded the case back to the Circuit Court stating that the filing was within the time limitations because the clock does not begin to run until the day after the date of injury.

Worker's Compensation: In *Central GMC, Inc. v. Lagana* filed on March 3, 1998, the Maryland Court of Special Appeals reversed the decision of the Circuit Court which granted summary judgement in favor of Deborah Lagana. Ms. Lagana was involved in an automobile accident while employed at GMC. GMC paid Lagana several weeks worth of workers compensation before denying her further benefits. Lagana settled with Nationwide Insurance and then proceeded to file a claim so that she could collect the remainder of her worker's compensation. A commissioner denied Lagana's claim on the grounds that her settlement with Nationwide constituted a binding election of remedies. Lagana appealed and the Circuit Court granted her summary judgement. In agreement with the commissioner, the Maryland Court of Special Appeals reversed this decision.

Torts: In *Tall v. Board of School Commissioners of Baltimore City* filed on March 4, 1998, the Maryland Court of Special Appeals affirmed the decision of the Circuit Court to dismiss Tall's complaint on the grounds of failing to state a claim. Roy Tall was a nine-year-old boy who had Down syndrome. In the summer of 1995, he was beaten on his arms and legs with a ruler by Robert Manning, a teacher participating in a special education program. Manning claimed he was reprimanding Tall. The boy's father sued the Board for negligence, assault, battery, and intentional infliction of emotional distress. The court decided, because there was no factual dispute, that Manning was acting outside of his scope of employment. Therefore, the court dismissed the complaint against the Board. Manning was separately convicted of assault.

Insurance: In *Young v. Allstate Insurance Co.*, filed on March 4, 1998, the Maryland Court of Special Appeals reversed the Circuit Court decision that granted summary judgement to Allstate Insurance Company. Jimmy Young parked a company vehicle on northbound 18th Street in the District of Columbia when taking his lunch. When he exited his vehicle, he was struck by another vehicle in the right knee. Mr. Young brought legal suits against both driver and his own automobile insurance company, Allstate. Allstate asserted that they were not liable due to an exclusion clause in Mr. Young's policy. The clause stated that any involvement with a vehicle that he did not own, but was using for his own purposes was not covered. Maryland's uninsured motorist statute provides for only two exclusion clauses allowable by insurance companies which include "Owned-but-uninsured" and "Named driver." Even though Mr. Young did sign a policy with a "Regular use" exclusion, the Maryland Court of Special Appeals stated that this is not one of the allowable exclusions. *Blue Bird Cab Co., Inc. v. Amalgamated Casualty Ins. Co.*, 109 Md.App. 378 established that any clause except those provided by Maryland statute is unenforceable.

Insurance: In *Ricardo D. Zappone et al. v. Liberty Life Ins. Co. et al.*, filed on March 11, 1998, the Maryland Court of Appeals reversed a decision of the Maryland Court of Special Appeals overruling a 1995 Court of Special Appeals holding. Ricardo Zappone, was solicited by Liberty Life Insurance and purchased their "Executive Wealth Builder II" policy from William Miller, an agent of the insurance company. Miller misled Zappone on the details of the policy including its cash value, payment procedures, and interest as being tax deductible. Zappone filed a complaint against Liberty Life for negligence, negligent misrepresentation, and fraud. The

Circuit Court for Montgomery County relied on the 1995 case of *Vicente v. Prudential Ins. Co. of America* and ruled in favor of Liberty Life. In *Vicente*, the Court of Special Appeals ruled that consumers of insurance policies were exclusively limited to administrative remedies in instances of deceptive trade practices. Zappone appealed his case and filed a writ of certiorari concerning *Vicente*. The Maryland Court of Appeals overruled the *Vicente* case stating that the Court of Special Appeals erred in their ruling and reversed the ruling in Zappone's case. They asserted that when there is no legislature or legislative history that shows administrative remedies to be exclusive, it will not be presumed exclusive.

Labor and Employment: In *Department of Labor, Licensing, and Regulation v. Barbara M. Hider et al.*, filed on March 11, 1998, the Maryland Court of Appeals disagreed with the Maryland Court of Special Appeals concerning "misconduct" and remanded the case back to the lower court. Barbara Hider and Virginia White were denied unemployment benefits after being fired from their positions at an Anne Arundel County nursing home. The two nurses were said to have received an emergency call concerning an elderly gentleman having chest pains. Instead of responding to the call, the women first unloaded food from their cars for a pending bridal shower. The nursing home fired the women. The trial court ruled that the women should be ineligible for unemployment benefits for a period of 10 weeks due to "misconduct." The Maryland Special Court of Appeals reversed the decision and granted the women benefits. The Maryland Court of Appeals remanded the case back to the Court of Special Appeals where they were ordered to affirm the trial court's decision. They had interpreted the term "misconduct" too stringently. The term is intended to mean poor judgment and not a willful act with wrongful intent; therefore, the Court of Appeals found the Court of Special Appeals in error.

Consumer Protection: In *Hardy v. Winnebago Industries, et al.*, filed March 12, 1998, the Maryland Court of Special Appeals decided that a manufacturer is not obligated to refund the entire purchase price for a motor home setting precedent for Maryland law. William and Donna Hardy purchased a Winnebago motor home from Recreation World. The Winnebago style motor homes are attached to Ford chassis. The Hardys set out for a cross country trek the day after the purchase. They experienced loud clanging noises from the vehicle in Wyoming. They contacted Winnebago who referred them to Ford. The Ford dealership in Wyoming told the Hardys that they would be able to drive the Winnebago, but that a drive shaft needed to be replaced. The Hardys continued their cross country trip without having the drive shaft repaired. They drove the Winnebago from Maryland to California and back before having the drive shaft repaired. The Hardys were unhappy with the repairs and filed suit against Recreation World, Winnebago, and Ford sending all three companies letters revoking the Hardys' acceptance of the motor home. Recreation World settled with the plaintiffs out of court giving them half of the motor home's value. The Circuit Court granted both Winnebago and Ford summary judgment stating that manufacturers do not have "seller" status when pertaining to revocation and therefore are not liable to the purchaser. They also asserted that the "Lemon Law" does not cover motor homes. The Maryland Court of Special Appeals affirmed their holding.

Corporation/Lead-paint: In *McCleary et al. v. Rowhouses Inc., et al.*, filed on March 13, 1998, the Maryland Court of Special Appeals affirmed the lower court ruling in favor of a landlord. Celia Littlejohn filed suit against Rowhouses Inc. for the high levels of lead paint her son LaMont McCleary, Jr., had in his blood. Littlejohn and her son moved from a Banner Realty rowhome in 1990 after living there five years. After Littlejohn had left the rowhomes, the company was sold to Rowhouses Incorporated. She filed a suit in 1996 trying to hold Rowhouses Inc. responsible for Banner Realty's liabilities. The trial court was correct in granting Rowhouse summary judgement because Maryland law does not hold a company responsible for its predecessor's liabilities. The new corporation can only be held responsible if it is a continuation of the previous corporation. No evidence was shown that could establish Rowhouse as a continuation of Banner; therefore, the Court of Appeals affirmed the trial court's decision to grant summary judgment in favor of the landlord.

Negligence: In *Kelly M. Williams v. Robert Harris Sr., T/A Andrew's Shell Service* filed on March 16, 1998, the Maryland Court of Special Appeals decided that Ms. Williams was not contributorily negligent nor assumed the risk when she was scalded from hot water by her car's radiator that the Defendant repaired. Kelly Williams had numerous overheating problems with the 1984 Mazda that she drove. Andrew's Shell Service Station worked on the problem four times, finally replacing the radiator hose. After the replacement of the hose, Williams noticed that the vehicle's temperature gauge was abnormal. She poured water on the engine and did not see any hissing or smoking indicating that the engine was not hot. She then tried to open the radiator's pressure release valve. The radiator shot out hot water and scalded Williams. The trial court granted summary judgement in favor of Andrew's Shell Service stating that Kelly Williams was contributorily negligent. The appellate court stated that any reasonable person would have performed the same actions as Williams; therefore, the granting of summary judgement to the Defendant was an error.

Discrimination: In *Munday v. Waste Management of North America, Inc.*, filed on March 16, 1998, the 4th U.S. Circuit Court of Appeals remanded a breach of contract case to the U.S. District Court for the District of Maryland to assess damages. Dawn F. Munday was an employee for Waste Management of North America, Inc. She was fired on May 30, 1989, on the grounds of insubordination. She filed a complaint with the Maryland Office of Human Rights alleging sexual harassment. Munday and Waste Management signed a settlement agreement that reinstated Munday to her original position and also guaranteed that Waste Management would not retaliate in any form against Munday. When she returned to work, she was denied the route she requested, was subjected to a variety of unpleasanties, and the other employees completely ignored her following the instructions of management. She resigned from the company on December 7, 1992. After a bench trial at the U.S. District Court, the judge found that a breach of contract, constructive discharge, and retaliatory discharge had ensued. The Fourth Circuit Court reversed the findings of retaliatory discharge and constructive discharge. However, they affirmed the breach of contract holding stating it required a lower threshold for proof and then remanded the breach of contract holding to the lower court to re-compute damages. The U.S. District Court awarded her backpay, prejudgement interest on the back pay, and mental suffering totaling \$68,366.

Evidence: In *Jose Gonzalo Rivera v. State of Maryland*, filed on March 18, 1998, the Maryland Court of Special Appeals reversed the conviction of Jose Rivera and remanded the case back to the lower court. Jose Gonzalo Rivera was alleged to have sexually assaulted his young nephew.

The boy told his parents about the sexual encounter with his uncle. They took him to Shady Grove Adventist Hospital to be examined. Dr. Rebecca Salness stated that immediately preceding the anal exam, the child blurted out "Gonzalo did it." The results of the exam showed injury corresponding to anal intercourse. At Rivera's trial, Dr. Salness was a major player in the State's case. She testified that the child's remark before examination was an unsolicited "excited utterance," and remarks such as these are extremely reliable. Rivera appealed his case stating that Salness should not have evaluated the reliability of the child's remark. The Maryland Court of Special Appeals agreed claiming that a witness is prohibited from commenting on the credibility of other witnesses. Credibility is a matter for the jury to decide. The case was remanded back to the trial court.

Workers' Compensation: In *Mary E. Wills v. Baltimore City* and *Jerry Blevins v. Baltimore City* filed on March 19, 1998, the Maryland Court of Special Appeals ruled that a government employee's workers' compensation benefits could be offset by retirement benefits. Both Wills and Blevins were government workers who were injured during employment at their place of work. Shortly after being awarded weekly sums in disability, both Wills and Blevins retired. They were receiving both disability checks and retirement checks at the same time. The Workers' Compensation Committee denied the county's request to offset Will's disability amount by the amount of her retirement. The county appealed to the Circuit Court. The county filed a petition concerning Blevins with the Circuit Court concerning the same manner. The court ruled in favor of the county in both cases. The Maryland Court of Special Appeals affirmed the two similar decisions of the Circuit Court. The offset is permissible according to legislative history that prevents government employees from a double gain.

Intentional Torts: In *Watkins v. Blockbuster Videos*, filed on March 23, 1998, the Maryland Court of Special Appeals granted summary judgement to Blockbuster Videos who was charged with false imprisonment, libel, slander, assault, battery, and numerous other charges. Weldon Watkins was a customer at the Liberty Road Blockbuster. Another customer had told the store manager that Watkins was stealing. The manager called the police who came to the location and questioned Watkins. Watkins openly let the police search his coat, shirt, and pants. Finding nothing, the police left and Watkins was free to leave the store. Watkins filed a complaint against Blockbuster following the incident. The lower court found that Blockbuster could not be liable for false imprisonment because Watkins was free to leave the store at any time. The Court found Blockbuster not guilty of assault and battery because none of the Blockbuster employees touched or threatened Watkins. The trial court found all other charges non-applicable to Blockbuster and granted summary judgement in their favor. The Maryland Court of Special Appeals affirmed the holding.