

Recent Developments in the Law

Vol. No. XVIII

July 6, 1998

Lead Paint: In *Johnson v. Rowhouses, Inc.*, filed on April 3, 1998, the Maryland Special Court of Special Appeals affirmed the ruling that granted summary judgment to a landlord in relation to a lead-paint complaint. Tyese Green, the mother of Jacqueline Johnson, filed a complaint against Rowhouses, Inc. on behalf of her daughter when she was found to have lead levels in her blood that were three times the normal level. Rowhouses, Inc. owned the property at 2523 Emerson Avenue where Jacqueline lived for approximately nine months. Rowhouses, Inc. received a notice from the Baltimore City Health Department concerning lead paint on their properties and removal of all deteriorated lead paint was ordered by the City. Rowhouses, Inc. failed to remove the deteriorated lead paint from 2523 Emerson Avenue from the time of the notice to the time that Jacqueline Johnson and her mother moved. This time frame was about five months. The Plaintiff needed to show the Court that this five-month span of time was a substantial factor in the levels of lead paint in Jacqueline's blood. The Defendant's motion for summary judgment stated that Jacqueline did not suffer any injury due to lead paint exposure for the period of the five months that notice of the deteriorating paint was known. The Plaintiff called the only expert witness who stated that it was fair to say the Plaintiff's exposure to lead paint within the five-month period was probably insignificant in respect to the levels of lead in her blood. The Circuit Court for Baltimore City granted Rowhouses, Inc. summary judgment because the Plaintiff could not demonstrate that the lead paint was a substantial contributing factor to Jacqueline's injuries. The Maryland Court of Special Appeals affirmed the lower courts ruling.

Insurance: In *Eagan (Guardian) v. Nationwide*, filed on April 8, 1998, the Maryland Court of Special Appeals affirmed the Howard Circuit Court decision that a homeowner's insurance policy did not cover payments to "resident relatives". In 1992, John C. Calhoun killed his wife by kicking the ladder out from under her that she was using to clean out their gutter. In 1993, Calhoun was sentenced to five years in prison for his plea of guilty to voluntary manslaughter. The guardian of his two children filed a wrongful death suit on their behalf. They were awarded 2.36 million dollars. They will be unable to collect such funds from their father, Calhoun, who filed for bankruptcy. The Circuit Court ruled that the Nationwide Golden Blanket Homeowner's Insurance Policy was not liable to pay the awarded amount to the children. In the policy there was a specific clause that excluded payments to "resident relatives" (any person living with the policy holder). The children were living with both parents at the time of their mother's death which made them a resident relative of their father. Therefore, the plain language of the policy excluded Nationwide from any payments awarded to the children. The Court noted that Maryland was not a state that practiced interpreting insurance policies most stringently against the insurance companies.

Civil Procedure: In *Deitz v. Palaigos*, filed on April 2, 1998, the Maryland Court of Special Appeals affirmed the decision of the Circuit Court to dismiss a complaint following the doctrine of collateral estoppel. August S. Deitz Jr. had a suit filed against him by his own siblings concerning the reimbursement of attorneys fees. The orphans' court ruled in favor of the siblings and ordered Deitz to pay \$4,500 for the fees. August Deitz appealed to the Circuit Court and later to the Court of Special Appeals both of which affirmed the orphans' court ruling. August Deitz filed for a chapter 7 bankruptcy after the siblings had his wages garnished for collection of the \$4,500. However, the Court allowed the collection of the \$4,500 debt. Deitz filed a complaint with the Circuit Court regarding the writ of garnishment stating a misrepresentation of his status as a judgment debtor. The Circuit Court dismissed his complaint under the doctrine of collateral estoppel. The doctrine of collateral estoppel was applicable because (1) the bankruptcy court had already decided that Deitz was able to pay the orphans' court award

to his siblings (2) the bankruptcy court ruled that Deitz was individually liable to pay the award (3) Deitz was indisputably a party to the bankruptcy proceedings (4) the bankruptcy issue was essential to the other issue previously litigated, and (5) Deitz was given fair opportunity concerning appeals in the initial suit filed against him and within the bankruptcy proceedings. With all of the requirements being met for the doctrine of collateral estoppel to be applicable, the Court was correct in dismissing Deitz's claim.

Insurance: In *Chicago Title Insurance Company v. Lumbermen's Mutual Casualty Company*, filed on April 2, 1998, the Maryland Court of Special Appeals affirmed a ruling that released a surety company from liability due to a settlement of the principle even though the surety did not take part in the settlement. Chicago Title Insurance filed suit against Academy Title Group, Inc., Academy's principal David Therrien, and Lumbermen's Mutual Casualty Company. Academy Title Group was an escrow agent for Chicago Title and Lumbermen's Mutual provided the agent's surety bond to Academy and its principals. Chicago Title claimed that funds had been misappropriated by Academy. Academy and its principal, Therrien, settled with Chicago Title without participation from Lumberman's Mutual. Lumberman's Mutual stated that the release of their principal, Academy, released them from liability as the surety and filed a motion for summary judgment. The Court granted the motion for summary judgment relying on several Maryland cases which demonstrated that unless a reservation of rights clause was included in the settlement release, the release of the principal discharges the surety. (*Noma Electric Corp. V. Fidelity & Deposit Co.* 201 Md. 407,412; *Fidelity Deposit Co. V. Olney Associates, Inc.* 72 Md. App. 367; *Federal Land Bank of Baltimore, Inc. V. Esham* 43 Md. App. 446) Chicago Title did not include a reservation of rights clause to pursue other parties in the complaint, therefore, the court correctly granted Lumberman's Mutual's motion for summary judgment.

Torts: In *MQIL v. Lyon and Lyon v. Campbell*, filed on April 1, 1998, the Maryland Court of Special Appeals reversed a lower court decision that held John Lyon liable for tortious interference with business relationships and breaching his fiduciary obligations as principal of a company. John Lyon formed a company in 1980 and leased a limestone quarry for nine years with the option to buy. The quarry would be sold to Lyon's company, Millville Quarry, Inc., for the 1980 purchase price if bought before August 31, 1989. A subsidiary of MQI filed a complaint against Lyon for tortious interference and breach of fiduciary obligations when he refused to give a personal guarantee on a loan for almost \$941,000. A jury found Lyon guilty of the charges, but upon appeal the Maryland Court of Special Appeals reversed the decision. The tort of wrongful interference was defined as a volitional act that damages a lawful business done with malice which causes damage and loss. Maryland law stated that one cannot be liable for damage to a business by refusing to continue a terminable business relationship. Lyon's fiduciary duty required him to step away from acquisitions or interferences with company properties. Therefore, he did not breach his duty by refusing to risk his personal financial matters. The decision of the lower court was reversed.

Insurance: In *Lerner Corporation v. Assurance Company of America*, filed April 2, 1998, the Maryland Court of Special Appeals affirmed a Circuit Court holding that granted summary judgment to insurers regarding coverage under their commercial general liability policy. In 1984, a building was sold to the General Services Administration of the federal government. In 1991, problems arose with the facade panels attributable to defects in the attachment of marble to the panels. The builder repaired the problems and then proceeded to file a claim against their insurance policy alleging that the costs of the repairs were covered under their commercial general liability policy. The court found Maryland law to imply that an insurance company was not responsible for reimbursing their policy holders for defective workmanship that did not cause bodily injury or damage items outside of the work product. The degree of the quality of work is not the issue in a tortious liability claim; the issue is physical damage to others. The Maryland Court of Special Appeals affirmed the holding that granted summary judgment in favor of the insurance

company.

Duty of Care: In *Coleman, et al. v. District of Columbia, et al.*, filed on February 27, 1998, the District of Columbia Superior Court denied the motion for summary judgment that was filed by the District of Columbia. Robin Coleman burned her leg on an exposed, uninsulated hot water heating pipe in her public housing apartment. The Plaintiff claimed that the District of Columbia Housing Authority (DCHA) had a duty to care that arose from several different sources including common law, the lease agreement, and Municipal Regulations. The DCHA asked for summary judgment on the grounds that the insulation of hot water pipes in public housing was a discretionary decision; therefore, the DCHA warranted governmental immunity. After a review of similar cases in the District of Columbia and parallel cases throughout the United States, the Court held that the duty to insulate the pipes was a ministerial act. The insulation related to the execution of public policy and did not require judgment, only compliance making the act ministerial in nature. There was also dispute as to the material facts of the duty to insulate the pipes. Experts from both sides were called and argued the BOCA code exceptions. Because ministerial acts were not barred from suit by governmental immunity and material facts were in question, summary judgment was denied.

Damages: In *Hall v. Lovell Regency Homes Limited Partnership*, filed on April 20, 1998, the Maryland Court of Special Appeals affirmed the jury verdict of the lower court. Lovell Regency Homes Limited Partnership constructed a new development in which four couples purchased new homes. These couples found problems with water and drainage which did not allow them to finish their basements as planned. They filed suit against Lovell Regency. A jury found in favor of Lovell Regency on the grounds of negligence, fraud, and breach of an implied warranty. They found against Lovell Regency for the other claims that included breach of contract, breach of express warranty, and negligent misrepresentation. They awarded nominal damages to the homeowners. The court instructed the jury that they could award nominal damages to the homeowners, but could not award damages for loss of use and enjoyment or loss in fair market value of the homes. For an award to be given for loss of use and enjoyment, evidence must be submitted that shows proof of loss. An award for loss of fair market value must be based upon two value figures at one point in time that demonstrates the cost to repair damages. The homeowners did not present any evidence of loss or out of pocket costs; therefore, the court correctly instructed the jury to award only nominal damages. The holding of the lower court was affirmed.

Contracts: In *Mass Transit Administration v. CSX Transportation, Inc.*, filed on April 15, 1998, the Maryland Court of Appeals ruled to enforce an indemnification clause in a Commuter Rail Passenger Service Agreement in the same manner as a liability insurance policy. CSXT and MTA entered into a contract which provided that CSXT would operate contract services in a ³safe and efficient manner with the use of appropriate facilities and staff for management, train operations, and maintenance...² MTA agreed to indemnify and defend CSXT from any and all varieties of liability arising out of the service contract including losses, damages, claims, and law suits. CSXT later contracted Melvin Benhoff Sons, Inc. for the services of paving four road crossings. MTA was not notified of the arrangement. On the date that services were being performed at the Hanover Road crossing, a morning MARC train was en route in that direction. The train hit and destroyed a backhoe. No injuries were incurred. Benhoff sued CSXT and settled out of court for the sum of \$23,350. CSXT turned to MTA for indemnification. The Court found that the damage to the backhoe arose out of the Contract Service. Due to the phrasing of the contract agreement, MTA was liable to indemnify CSXT for any circumstance arising out of the Contract Service. For this reason, the Court of Appeals held that MTA was liable to indemnify CSXT for the cost of the settlement although they were without fault in the incident.

Labor and Employment: In *Department of Labor, Licensing and Regulation v. Muddiman*, the Maryland Court of Special Appeals ruled that repeated violations of employment policies constituted gross

misconduct. Tammy Muddiman was employed by American Studios, Inc. who had warned her repeatedly to reshape her handling of company funds and scheduling procedures or face termination. After the continual violation of policy, Ms. Muddiman was terminated. She applied for unemployment benefits which was initially granted due to insufficient evidence of misconduct. Her case went to a hearing examiner, the Board of Appeals, the Circuit Court, and finally the Court of Special Appeals. The Court of Special Appeals noted that there are two definitions for ³gross misconduct² under LE section 8-1002. One cited intentional and willful disregard; the other definition cited repeated violations. The Court found Ms. Muddiman acted with gross misconduct according to the second definition which disqualified her for unemployment benefits.

Lending/Imposter Rule: In *Bank of Glen Burnie v. Elkridge Bank*, the Maryland Court of Special Appeals held that enforcement of the ³imposter rule² required the forging party to not only misrepresent but also impersonate the named party. Oceanic Ltd., Inc. made a loan from Elkridge Bank for almost \$343,000 for the purchase of new trucks from Beal GMC. The loan was issued in the form of two checks made to both Oceanic and Beal with Beal named as the lienholder. Oceanic took the checks to the Bank of Glen Burnie with a forged signature from Beal. The Bank of Glen Burnie cashed the checks and deposited the money into Oceanic's account. When Oceanic declared bankruptcy, Elkridge Bank learned that the money was not used for the purchase of trucks from Beal GMC; therefore, there was no lien. Elkridge sued the Bank of Glen Burnie for breaching UCC warranties. The Circuit Court granted summary judgment for Elkridge Bank. The Court of Special Appeals affirmed the lower court's decision when the Bank of Glen Burnie appealed the holding claiming the imposter rule precluded recovery. ³Imposter² according to Black's Law Dictionary is one who poses as another for gain. The Court of Special Appeals stated that Oceanic's forged signature misrepresented but did not impersonate Beal; therefore, the imposter rule did not apply.

Insurance: In *Driggs Corp. v. PMA Ins. Co. et al.*, filed on May 4, 1998, the United States District Court of Maryland determined that an insurance company which has agreed to provide defense is not obligated to pay for counsel of the assured's choosing. In 1993, a pipeline rupture polluted the Potomac River with 400,000 gallons of diesel fuel. Colonial Pipeline Company claimed that Driggs corporation was responsible for the pollution. Driggs' insurer, PMA Insurance Company, hired a small firm in Rockville to defend Driggs in the lawsuit. However, Driggs retained the megafirm of Kirkpatrick & Lockhart as counsel while insisting that the insurer's law firm remain active in the case. The Defendant, Driggs Corporation, received a directed verdict in their favor. PMA refused to pay the bill for Kirkpatrick & Lockhart which totaled 2.8 million dollars. Driggs claimed that they had a right to choose their own counsel because the insurer's counsel represented the insurance company in multiple matters. Judge Frederic Smalkin wrote that insurers can choose any counsel that is ³admitted to the bar and competent to try a case.² He noted that small firms have consistently won in large volume cases. Maryland law stated that an insured may only choose its own counsel if there is an actual conflict of interest between the insurer and the insured. Driggs attempted to show a conflict, but the Court disagreed. The attorney hired to represent the insured was fully competent to try the case, and no conflict of interest was shown; therefore, the insurer was not responsible for paying for the defense counsel independently obtained by the insured.

Evidence: In *Wroblewski v. de Lara*, filed on April 30, 1998, the Maryland Court of Special Appeals ruled that a trial judge did not abuse his discretion by allowing an expert witness to reveal his earning in previous years from his participation as an expert witness. Linda Wroblewski was diagnosed with peritonitis from a small perforation of the bowel due to gynecological surgery performed by Nora de Lara, M.D. Subsequently, Wroblewski sued Nora de Lara for malpractice. Wroblewski's expert witness, Dr. Max Lilling, was asked by the Defendant how much money he had made by acting as a medical expert in 1995. The Plaintiff's counsel objected, and the judge overruled. The Court reasoned that this information may be pertinent in assessing the witness' credibility and objectivity. There was reason to believe that Dr.

Lilling's income accrued through his expert testimony was substantial given Wroblewski's counsel had paid him \$27,000 alone. The jury found for Dr. de Nova in the lower court. The Maryland Court of Special Appeals agreed with the trial court judge relying on *Collins v. Wayne Corp.*, 621 F.2d 777 and *Trower v. Jones*, 520 N.E.2d 297 which allowed opposing counsel to inquire specifically as to the previous earnings of an expert witness upon cross-examination.

Real Property: In *The Milton Company v. Council of Unit Owners of Bentley Place Condominium*, filed on April 29, 1998, the Maryland Court of Special Appeals ruled that the developer and general contractor of a condominium were responsible for common element and individual unit defects also awarding the Plaintiffs the cost of attorney fees. The Milton Company was the general contractor responsible for hiring subcontractors in relation to Bentley Place Condominium. The Council of Unit Owners found defects and filed suit against Milton and the subcontractor Tuckerman Lane Development Company. A jury found for the Plaintiff, and the Defendants appealed on the grounds that the court erred in issuing their jury instructions. Milton argued that there was no viable claim under Title 11 of the Real Property Article, the Maryland Condominium Act. In *Starfish Condominium Association v. Yorkridge Service Corp.*, 295 Md. 693, the Maryland Court of Appeals found that Title 10 warranties for the general sale of real property was applicable to new condominiums. The trial court did not err in describing two different standards for implied warranties (one under Title 10 and the other under Title 11). Additionally, Milton complained that the awarded attorneys fees were not documented with explicit time records. The appellate court again did not agree with the defendants, stating that trial courts have a large measure of discretion when assigning monetary values to legal services. Unless the amount is clearly unconscionable, it will not be disturbed.

Workers Compensation: In *Frederick County Board of County Commissioners v. Vache*, filed on May 14, 1998, the Maryland Court of Appeals held that injury occurring on a public sidewalk did not constitute grounds for an award of workers compensation benefits. Bridget Vache parked her car in a private church lot across the street from her workplace. There had been a snow storm the day before, and most of the city had shut down. Ms. Vache was required to go to work. When returning from her lunch break, she slipped on the sidewalk that ran between the private parking lot and her workplace. She was close enough to touch her place of employment when she fell. The Circuit Court awarded Ms. Vache workman's compensation, and the Maryland Court of Appeals reversed their decision. The Court stated that the sidewalk was not peculiarly related to her employer. Any person who was to walk this public sidewalk would encounter the same situation as Ms. Vache. She parked in the destination of her choosing, and was not exposed to any higher level of danger than the rest of the general public. The sidewalk was not on her employer's premises and did not pose a danger peculiar to her workplace; therefore, Ms. Vache was not awarded workers compensation benefits.

Damages: In *Le Marc's Management Corporation v. Valentin*, filed on May 19, 1998, the Maryland Court of Appeals tightened the standard by which a punitive damage award could be given in a defamation suit. Francisco Valentin worked as a stock room clerk for Le Marc. Ten years ago, Valentin and his co-workers were given lie detector tests concerning the stealing of company products. Valentin and his co-workers were Hispanic, and the examiner noted difficulty with the test because of language barriers. Later, when Valentin was training to become a bank teller, Le Marc sent a reference that stated he had been "terminated due to pilferage". The bank fired Valentin with the understanding that he was unable to reapply with them. He sued Le Marc for defamation. In the lower court, a jury found for Valentin and awarded him both compensatory and punitive damages. The Maryland Court of Special Appeals reprimanded the punitive damage award back to the court stating that the jury was not properly informed that the standard of proof for punitive damage awards was clear and convincing evidence. Another jury awarded a higher value of punitive damages. The Maryland Court of Appeals sent the case back to the lower court again for a retrial with instruction for the standard of an award of punitive damages being

actual knowledge of the falsity of a defamatory statement. This was a more stringent interpretation than the previous definition of acting with reckless disregard for the truth. The interpretation was traced back to the 1992 decision in *Owens- Illinois v. Zenobia*.

Evidence: In *N.B.S., Inc. v. Harvey*, filed on May 5, 1998, the Maryland Court of Special Appeals affirmed the trial court's decision that led to jury awards of \$300,000 and \$325,000. Rodney Harvey and Shawnter White, two small children, resided with their mother in a home rented from N.B.S., Inc. Both children were found to have high blood lead levels. They filed suit against N.B.S. claiming negligence and violation of the Maryland Consumer Protection Act. The trial court excluded an expert witness for N.B.S. on the grounds that the expert had a long extended absence from the subject matter. The trial court also denied N.B.S.'s Motion for Judgment and refused to allow them to supplement their answer. The result of the trial was the jury award in favor of Harvey and White. On appeal, the Maryland Court of Special Appeals reviewed and affirmed all actions taken by the lower court.

Civil Procedure: In *Porter Hayden Company, et al. v. Barbara Bullinger, et al.*, filed on May 15, 1998, the Maryland Court of Appeals held that confidential settlement agreements between plaintiffs and defendants were considered discoverable materials after a verdict for defendants that went to trial. The case was initially brought before the Circuit Court of Baltimore City concerning asbestos and related injuries. A jury found for the plaintiffs in four instances. Two of the defendant companies requested the settlement information of the other plaintiffs and defendants that were initially involved in the case. The lower court denied the request. The Maryland Court of Special Appeals affirmed the lower court's decision. However, the highest court in Maryland reversed this holding. They stated that discovery in Maryland is very broad and includes all information that is relevant and not privileged. The Court stated that settlement material may be irrelevant in pre-trial stages, but after a verdict is rendered, the material becomes relevant in determining the amount of damages.

Punitive Damages: In *Robert Scott v. Terry Napoleon Jenkins* 345 Md. 21, 690 A.2d 1000, filed on March 14, 1997, the Maryland Court of Appeals reversed the Maryland Court of Special Appeals and provided a more stringent standard to recover punitive damages in Maryland tort actions. The complaint must demand specifically the amount sought for recovery and detail facts indicating a wrongful intent. A punitive damage award received from an insufficient complaint may tender a constitutionally infirm judgment. This case demonstrated a return to the actual malice standard concerning tort actions. Actual malice must be shown by clear and convincing evidence as established in *Owens-Illinois v. Zenobia*, 325 Md. 420, 601 A.2d 633 (1992). The tort may be shown by a preponderance of the evidence, but the factual information supporting the damages must be shown by clear and convincing evidence. Punitive damages must be based on a sense of deliberate wrongdoing, evil motive, or the intent to injure or fraud. Several cases have shown this basis for punitive damages including: *Montgomery Ward v. Wilson* 339 Md. 701, *Ellerin v. Fairfax Savings* 337 Md.216, *Alexander & Alexander Inc. v B. Dixon Evander & Assocs.* 336 Md. 635, *Komornik v. Sparks* 331 Md. 720, and *Adams v. Coates* 331 Md. 1. This same standard is adhered to by Maryland's sister state, Virginia.

Premises Liability: In *Gellerman v. Shawan Road Hotel Limited Partnership, et al.*, filed on May 13, 1998, the United States District Court ruled that an owner of land has no duty to warn an invitee of an obvious danger. Florence Gellerman tripped and fell near a gap in the sidewalk of approximately one inch in front of the Marriott's Hunt Valley Inn. She sued for \$1 million in damages and for \$100,000 for loss. The Court granted summary judgment in favor of the hotel. The judge stated that had the Plaintiff taken reasonable care for her own safety, she would have openly observed the crack in the sidewalk. The holding borrowed the logic of the 1986 case *Scott v. Sears, Roebuck and Co.*.

Civil Procedure: In *Kane v. Schulmeyer*, filed on May 12, 1998, the Maryland Court of Appeals held that an action against multiple defendants may be brought in the location where the cause of action arose

when there is no other single venue applicable to all of the defendants involved. Michael Kane, among other individuals, invested in a partnership formed by Mr. Schulmeyer who agreed to return invested funds if certain conditions arose. The conditions did indeed arise, and the various investors demanded repayment. They filed suit in Montgomery County when the agreement was not honored. The court entered a judgment in the investors¹ favor, but the Court of Special Appeals reversed due to the venue. Maryland's highest court vacated the appellate judgment stating that when there is no single common venue an action may be brought in the location where the contract arose.

Health Care: In *Roberts v. Total Health Care, Inc.*, filed on May 14, 1998, the Maryland Court of Appeals decided that withholding funds from a settlement for a Medicaid recipient to repay the third party in the Medicaid program did not violate the procedural due process. Georgette Roberts¹ children received medical assistance through an HMO run by Total Health Care for lead poisoning. Total Health Care spent almost \$60,000 for the treatment of the children. When Mrs. Roberts sued her landlord on behalf of the children, Total Health Care asserted a statutory subrogation lien. The Circuit Court granted summary judgment in favor of Total Health Care when they sued Mrs. Roberts with regard to their portion of the settlement monies. The Special Court of Appeals affirmed this ruling. The Maryland Court of Appeals stated that the medical expenses Mrs. Roberts won actually belonged to the Medicaid program. The court affirmed the judgments made on behalf of Total Health Care.

Insurance/Duty to Defend: In *Interstate Fire & Casualty Company, Inc. v. 1218 Wisconsin, Inc. t/a The Third Edition*, filed on March 13, 1998, the United States Court of Appeals for the D.C. Circuit affirmed the lower court's judgment that an insurance company was not entitled to indemnification and reversed the counterclaim holding that the insurance company had no duty to defend in relation to policy exclusions. Teresa Williams was assaulted outside of The Third Edition, a D.C. bar, where both she and the attacker had been patrons that night. Ms. Williams sued The Third Edition for charges including negligent provision of alcohol, failure to protect a patron, and negligent hiring/training of employees. The Third Edition was insured by Interstate Fire & Casualty Company. Their policy included the exclusions of ³assault and battery² and ³liquor liability². Interstate denied coverage and refused to defend The Third Edition on the basis of these exclusions. The Third Edition reached a settlement with Ms. Williams that stipulated a \$1 million judgment equal to their entire interest in the insurance policy. The court decided that Interstate did not have the duty to defend Ms. Williams. Interstate sued the bar for indemnification of court costs. The court stated that they were not entitled to indemnification of costs involved in litigation. In the District of Columbia, the case law shows that the duty to defend is broader than the duty to indemnify. After the appellate court reviewed Ms. Williams¹ charges, they found that the policy exclusions did not apply to the case reading the insurance contract narrowly against the interests of the insurer. This discovery led them to reverse the lower court decision, and they held Interstate liable regarding the duty to defend. Because Interstate could have reasonably anticipated activity in litigation, The Third Edition was not held responsible for indemnifying the insurance company for their court costs.

Class Actions: In *Thomas, et al. v. Albright*, filed on March 27, 1998, the United States Court of Appeals for the D.C. Circuit affirmed a consent decree fair and reasonable and reversed the decision for individual members to opt-out in a class action discrimination suit. The Plaintiffs in this case initiated a class action suit against the United States Department of State for discrimination concerning African-American Foreign Service Officers. The District Court found for the Plaintiffs and awarded them a settlement. The Plaintiffs contested the settlement stating that it was not fair and reasonable. The appellate court reviewed the evidence and found the settlement fair and reasonable to the class as a whole. The United States Department appealed the District Court's ruling concerning individual Plaintiffs to opt-out of the settlement class. The appellate court found that the trial court had misread previous holdings and abused its discretion by allowing individuals to opt-out of the class claim. In the recent decision of *Eubanks v. Billington*, the D.C. appellate court held that in certain limited circumstances the trial courts may

authorize opt-outs. However, the situation at hand did not fit into the designated circumstances. The final ruling of the appellate court upheld the consent decree and demanded the decree binding on all involved class members.

Damages: In *Maxwell, et al. v. Gallagher, et al.*, filed on April 2, 1998, the District of Columbia Court of Appeals held that punitive damages could not be awarded if no basis for actual damages was established. The law firm of Maxwell & Bear was sued for breach of fiduciary duty for placing their personal financial gain ahead of the interest of their clients to whom they provided legal representation. The law firm played the dual role of business associate and legal counsel concerning stock exchanges. The trial court judge ordered a recession of stock, awarded \$1 in nominal damages, and awarded \$75,000 in punitive damages. The trial judge claimed that there was no evidence to indicate the dollar value or equity of the stock; therefore, there were no actual damages. The law firm appealed the case on the basis that with the absence of actual damages, the award of punitive damages was in error. The D.C. Court of Appeals reversed the punitive damage award stating that the trial judge expressly found that there was no evidence of actual damages. Case law directed the court that without actual damages, punitive damages cannot be awarded.

Discrimination: In *Coward v. ADT Security Systems, Inc.*, filed on April 10, 1998, the United States Court of Appeals for the D.C. Circuit affirmed one summary judgment in favor of ADT and reversed and remanded another summary judgment for further inquiry. Boling and Coward were two ADT employees who filed suit claiming wage discrimination. In a wage discrimination case, the Plaintiff must first show a prima facie case. A prima facie case for discrimination is established by preponderance of the evidence, membership of a protected class, and work performance equal in labor to majority members who were compensated at a higher salary. The Plaintiffs provided a regression analysis which was rejected as evidence by the court for its failure to account for the major variables of education and prior work experience. Boling was titled as a Data Supervisor and earned more than all other Data Supervisors. She claimed that she was similar to the higher scaled Project Manager, but the court did not find her evidence of this claim adequate. The appellate court affirmed the summary judgment against Boling due to lack of evidence for a prima facie case. On the other hand, Coward provided a genuine factual issue as to his status and pay scale. The appellate court found that the trial court inappropriately granted summary judgment in Coward's case by rejecting an inference of wage discrimination that a reasonable jury could have questioned. They found that he established a prima facie case and remanded it back to the court for further inspection.