Recent Developments in the Law

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In order to keep you abreast of the recent developments in the law, we are reporting the substance of several current decisions of major import in the jurisdictions of Maryland, the District of Columbia and Virginia.

This material is being provided for your general information only, and is not a substitute for obtaining legal advice. The information provided is not provided as legal advice, or in the course of an attorney-client relationship. You should always consult an attorney for advice about the specific circumstances of your case.

MARYLAND COURT OF APPEALS

Torts-Local Government Tort Claims Act: Williams v. Maynard, 359 Md. 379, 754 A.2d 379 (2000). The failure to comply with the Local Government Tort Claim Act's notice requirement preludes the maintenance of a tort action against a local government even when that tort action is authorized by §17-107(c) of the Transportation Article and §5-524 of the Courts and Judicial Proceedings Article.

Insurance-Personal Injury Protection (PIP) Benefits: Bishop v. State Farm Mutual Auto Insurance, 360 Md. 225, 757 A.2d 783 (2000). Pursuant to state statute, the insurer of vehicle involved in accident is required to pay PIP benefits to injured passenger, even though passenger recovered such benefits from his insurer. Payment by vehicle owner's insurer does not result in duplicate of benefits in violation of the statute on coordination of policies, since the payment by the primary insurer would entitle the excess insurer to a refund from the injured passenger.

Torts-Negligent Misrepresentation, Employment: Griesi v. Atlantic General Hospital Corp., 360 Md. 1, 756 A.2d 548 (2000). Trial court erred in determining that a prospective at-will employee has no legally cognizable claim of negligent misrepresentation upon which relief can be granted. A prospective employee must rely upon the accurate information provided by a potential employer, and that employer should foresee that negligent misrepresentation may cause financial harm to the job-seeker. For claims of economic loss due to negligent misrepresentation, the injured party must prove that the defendant owed him a duty of care by demonstrating a intimate nexus between them. This intimate nexus may be demonstrated by showing contractual privity or its equivalent.

Torts-Abusive Discharge: Insignia Residential Corp. v. Ashton, 359 Md. 560, 755 A.2d 1080 (2000). An abusive discharge claim would be recognized based on a theory that employee was wrongfully discharged because she refused to acquiesce in a form of quid pro quo sexual harassment that would have amounted to an act of prostitution even if the charges violate additional federal and state statutes. A tort action for abusive discharge is not barred whenever the discharge might be found to be an act of sexual harassment for which a remedy exists under the employment discrimination laws, though it may be barred if based exclusively on such laws.

Civil Procedure-Relation Back Doctrine, Statute of Limitations: Stein v. Smith, 358 Md. 670, 751 A.2d 504 (2000). The relation back doctrine does not apply where an amended complaint is filed naming the last and sole owner as plaintiff in lieu of a defunct corporation after the statute of limitations has run. Filing of articles of revival are ineffective to achieve relation back to the date of the original filing of a complaint by a defunct corporation.

Civil Rights/Torts-Hostile Work Environment, False Imprisonment: Manikhi v. Mass Transit Administration, 2000 WL 1207279, CA No. 106 Sept. Term 1999. Where employer had actual or constructive notice of sexual harassment of plaintiff by another employee, plaintiff's allegations were sufficient to satisfy a Title VII claim for hostile work environment. Title VII is not limited to "economic" or "tangible" discrimination, but encompasses protection for employees for hostile environment sex discrimination. The employer had notice of the sexual harassment for approximately two years. Plaintiff's retaliation claim under Title VII, however, failed because she failed to allege adverse employment action. A legally sufficient claim of false imprisonment does not require that plaintiff would have attempted to get past a man blocking her way in a confined area in order to discover whether his implicit threat of force would be exercised. Any exercise of force, or threat of force, by which in fact the other person is deprived of his liberty, compelled to remain where he does not wish to remain, is an imprisonment.

Evidence-Admissibility of Extrinsic Evidence: Calomiris v. Woods 353 Md. 425, 727 A.2d 358 (1999). A trial court cannot use extrinsic evidence to interpret an unambiguous contract, even if the express terms of the contract would cause an unfair result. Maryland law generally requires giving legal effect to the clear terms of a contract and bars the admission of prior or contemporaneous agreements or negotiations to vary or contradict a written contractual term. Furthermore, one may not argue ambiguity in one contractual term or clause in order to gain the admittance of extrinsic evidence to contradict other terms or clauses in the contract that are unambiguous.

Civil Procedure-Objections at Depositions: Mayor & City Council of Baltimore v. Theiss, 354 Md. 234, 729 A.2d 965 (1999). When a lawyer is objecting during a deposition to questions, answers, or any other error or irregularity that may be cured at the deposition, the objecting party must state the specific grounds on which the objection is based or the objection is waived forever. Trial court did not err in overruling defendants' objections to deposition opinion questions, which would clearly have been improper if asked at trial, for the reason that counsel for defendants had not set forth his reasons for the objections during deposition in personal injury case.

Civil Procedure-Venue: Leung v. Nunes, 354 Md. 217, 729 A.2d 956 (1999). When determining whether a transfer of an action for the convenience of the parties and witnesses is in the interest of justice, a court is vested with wide discretion. However, the Circuit Court for Baltimore City abused it's discretion when it granted a motion to transfer for petitioners to Circuit Court for Howard County in an action brought by non-resident motorists who were injured in auto accident in Howard County. Motorists were entitled to bring action in Baltimore City against owners and drivers of other vehicles involved in accident, all of whom were also non-residents. Furthermore, movant for transfer did not demonstrate that any corporate defendant carried on regular business or had principal office in Maryland; only relevant contact that defendant motorists had with Howard County was they happened to have been passing through interstate highway when accident occurred.

Workers' Compensation-Compensability of Injury: Mulready v. University Research Corporation, 360 Md. 51, 756 A.2d 575 (2000). The traveling employee doctrine applies where a traveling employee's eating and bathing are reasonably incidental to the travel required by the employer, thus any injuries resulting from these activities are compensable under workers' compensation law. Positional-risk test, as opposed to the increased risk test, is used for determining "arising out of" causation in workers' compensation context; whereas "increased risk test" requires that claimant be exposed to a quantitatively greater degree of risk than the general public. Under the "positional-risk test," injury arises out of employment if it would not have occurred if claimant's job had not required him to be in the place where he was injured.

MARYLAND COURT OF SPECIAL APPEALS

Civil Procedure-Motion for Judgement in Negligence Case: Hurt v. Chavis, 128 Md.App. 626, 739 A.2d 924 (1999). Trial court erred when it granted motion for judgement as to liability in negligence action for personal injury arising from rear-end automobile accident, where neither damages nor injury (causation) was ever conceded by defendant. Liability in negligence action requires more than a finding or admission that defendant was negligent; liability arises only when all essential elements of action, including damages, are established.

Torts-Products Liability, Qualifications of Expert Witness: Wood v. Toyota Motor Corp., CSA No. 1511 Sept. Term 1999. A plaintiff who claims to be injured due to the defective design of an air bag must provide expert testimony to generate a jury issue on whether the air bag was defective. Although expert was a mechanical engineer, he did not meet the requirements of Maryland Rule 5-702 in terms of his qualifications and sufficiency of the factual basis for his opinions or assumptions.

Insurance-Indemnification of Employee: Wolfe v. Anne Arundel County, 2000 WL 1448658, CSA No. 2079 Sept. Term 1999. Where employer has no duty to indemnify it's employee's tortious conduct that was outside the scope of his employment, it has no duty to indemnify the employee's victim who was assignee of any and all causes of action employee might have had against employer arising out of employer's refusal to provide him with indemnification. County's self-insurance rules excluded claims brought against employees which were result of willful actions or gross negligence.

Torts-Joint Tort-Feasors, Mootness: Hill v. Scartascini, 134 Md.App. 1, 758 A.2d 1087 (2000). Victim's release of settling tortfeasor for amount in excess of verdict against non-settling joint-feasors does not permit a judgment in favor of the non-settling tort-feasors unless release specifically applies to all defendants. In addition, the case is not moot if the judgement entry fails to accurately reflect the jury's findings.

Civil Procedure-Doctrine of Judicial Estoppel: Mathews v. Gary, 133 Md.App. 570, 758 A.2d 1019 (2000). After securing a judgement in her favor in personal injury action against negligent motorist claiming that back surgery was necessary, patient is judicially estopped from bringing medical malpractice action against her surgeons claiming that surgery was unnecessary to her recovery.

Civil Procedure-Motion for Judgment Notwithstanding the Verdict: Piquette v. Stevens, 128 Md.App. 590, 739 A.2d 905 (1999). A motion for judgment notwithstanding the verdict (JNOV) tests the legal sufficiency of the evidence and is not granted when the jury could have found that legally competent evidence, however slight, exists.

Evidence-Expert Testimony: Hill v. Wilson, 2000 WL 1480881, CSA No. 00790 Sept. Term 1999. A trial judge has the power to exclude trial testimony that constitutes a material departure from what the expert witness testified to at his deposition. Appellants were not unfairly prejudiced by the ruling that prohibited expert witness from using a term that he had not used during his deposition. Appellants were entitled to and did assert that a bar on the back of appellee's wheelchair was the cause of a "second ulcer" that developed after appellee had been examined by his doctor. Furthermore, expert witness was not prohibited from testifying at trial to everything that he had testified to in his deposition.

Insurance-Insured Failure to Cooperate Clause: State Farm Mutual Automobile Insurance Company v. Gregorie, 131 Md.App. 317, 748 A.2d. 1089 (2000). Cooperation clause in an insurance contract requires that the insured assist in good faith in making every legitimate defense to a suit for damages. Under such a clause, the insured must make a full and frank disclosure to the insurer, give the insurer information needed for the defense, and be available for court proceedings and hearings. Moreover, under §19-110 of the Insurance Article, a finding that insured's failure to cooperate has caused prejudice to the insurer, allows insurer to disclaim coverage and relieves them of liability.

Negligence-Liquor Store Liability: Wright v. Sue & Charles, Inc., 131 Md.App. 466, 749 A.2d 241 (2000). Parents of minor child could not maintain an action against liquor store or store's owners for child's death since the child had voluntarily consumed alcohol and gotten behind the wheel of vehicle. Responsibility rests on the child who chose to purchase and drink alcohol and not on liquor store which sold the alcohol. This decision leaves Maryland as one of only three states that still do not recognize a cause of action for dram shop or social host liability. The court noted that substantive changes in law should be left to the Legislature.

Landlord and Tenant-Liability Consumer Protection Act: Forrest v. P & L Real Estate Investment Co., 2000 WL 1456457, CSA No. 2324 Sept. Term 1999. Tenant agreement to re-paint apartment, including areas with flanking paint, does not preclude landlord liability under Maryland Consumer Protection Act. The landlord had responsibility for compliance with the city housing code, had imputed knowledge of the condition of the premises, and knew of the potential danger. The tenants did not know of the danger.

Civil Procedure-Minimum Contacts: Hollingsworth & Vose v. Connor, 2000 WL 1639462, CSA No. 1489 Sept. Term 1999. The fact that manufacturer of asbestos-containing cigarette filters was reasonably aware that its filters might be purchased and smoked in Maryland is not sufficient to establish minimum contacts with the state under the long-arm statute. The company manufactured its filters in Massachusetts. In addition the company did not have an office in Maryland, did not design or manufacture its filters specifically for the Maryland market and, did not advertise or market its filers in Maryland. The manufacturer distributed its filters to a cigarette company who had plants in Kentucy and New Jersey and controlled the manufacturing, selling, and distributing of its own product.

D.C. COURT OF APPEALS

Evidence-Expert Witness Testimony: McLeish v. Beachy, 746 A.2d 892 (D.C. 2000). Trial court erred in striking medical expert's testimony because it did not apportion the extent of aggravation of preexisting injury where witness distinguished between preexisting tension headaches and the migraine headaches which plaintiff claimed began with trauma alleged in the suit.

Negligence-Indemnification: Quadrangle Development Corp. v. Otis Elevator Co., 748 A.2d 432 (D.C. 2000). Trial court properly denied indemnification for building operator from elevator company for judgment obtained by plaintiff who fell into unleveled elevator. The building operator was not entitled to implied indemnification based on relationship between parties. Where there is no express contract provision, an obligation to indemnify may be implied in fact on an implied contract theory or implied in law in order to achieve equitable results.

Workers' Compensation- Widow's Benefit: Beta Construction Co. v. D.C. Dept. of Employment Services, 748 A.2d 427 (D.C. 2000). Inquiry into whether a claimant is a "widow" entitled to workers' compensation death benefits is two-pronged; it first must be determined if the claimant and the decedent were living apart for justifiable cause, and it must then be determined if there was a conjugal nexus between them that subsisted at the time of the decedent's death. Substantial evidence supported finding in workers' compensation case that widow had been living apart from decedent worker for "justified cause" and that there existed a "conjugal nexus" at his time of death.

Negligence-Construction Trench: Bostic v. Henkels and McCoy, Inc., 748 A.2d 421 (D.C. 2000). Contractor who installs plywood boards covering a construction trench as a temporary sidewalk owes a duty of care to pedestrians and expert testimony is not needed as to standard of care because the matter falls within general knowledge. Expert testimony was not needed to permit a jury fairly to decide that a contractor's conduct in leaving a six to seven inch gap between boards, which served as a temporary sidewalk covering a trench half a block long and three feet wide on which pedestrians were expected to

walk, was negligence, particularly in the absence of safety cones and signs or other warnings of a hazardous condition.

Damages-Punitive Damages: Aurora Associates, Inc., v. Bykofsky, 750 A.2d 1242 (D.C. 2000). Award of punitive damages was erroneous where there was no basis in the record for an award of actual damages, even if nominal.

Negligence-Tavern Keeper: Jarrett v. Woodward Bros., Inc., 751 A.2d 972 (D.C. 2000). Tavern keeper is liable for serving, in violation of the statute, alcoholic beverages to underage intoxicated patron injured as a result of the intoxication and assumption of risk is not applicable if plaintiff is a member of the class that the statute was designed to protect. Statute creates civil liability where a particular statutory or regulatory standard is enacted to protect persons in plaintiff's position or to prevent type of accident that occurred, and plaintiff can establish his relationship to statute. In such a case, an unexplained violation of that statutory standard renders defendant negligent as a matter of law.

Civil Procedure-Pretrial Statement: Nelson v. Allstate Insurance Co., 753 A.2d 1001 (D.C. 2000). Trial court did not abuse discretion by permitting defendant to belatedly raise issue not raised during pretrial; applying offset to judgment for workers' compensation payments was proper in suit against insurer.

Civil Procedure-Forum Non Conveniens: Future View, Inc. v. Criticom, Inc., 755 A.2d 431 (D.C. 2000). Subcontractor's suit against general contractor to recover payment on contract to install audio-visual equipment at college in another state and perform training and maintenance could be dismissed based on forum non conveniens, even though the subcontractor was a District of Columbia resident and performed more than two thirds of the work there. This factor was outweighed by the need to apply Maryland law and the quality of the work of running wires and installing the equipment in Maryland.

Civil Procedure-Long Arm Statute: Etchebarne-Bourdin v. Radice, 754 A.2d 322 (D.C. 2000). In suit by Virginia plaintiffs against Virginia doctors, the appeal from dismissal on the ground that the claim did not arise from defendants business activities in D.C. was remanded in view of Shoppers Food Warehouse, 746 A.2d 320 (D.C. 2000), where the trial court properly exercised jurisdiction over a non-resident grocery store in a slip and fall case brought by D.C. resident that occurred in Maryland. In that case, defendants engaged in extensive advertising in D.C. newspapers and purposefully availed itself to the benefits and protections of D.C. by soliciting D.C. residents as customers for its Maryland and Virginia stores. In the present case, the doctors had some degree of advertising in the District, as well as professional and commercial contracts in the District.

Negligence-Somatization: Bahura v. S.E.W. Investors, 754 A.2d 928 (D.C. 2000). A judgment notwithstanding the verdict is proper only in extreme cases, in which no reasonable person, viewing the evidence in the light most favorable to the prevailing party, could reach a verdict for that party. Trial court erred in granting defendants' motion for judgement notwithstanding the verdict as to jury verdicts for plaintiffs who suffered injury of somatiform disorder as result of inhalation of contaminated indoor air at their workplace.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Torts-Negligence, Product Liability, Summary Judgment: Corcoran v. General Motors Corp., 81 F.Supp.2d 55 (D.D.C. 2000). Where plaintiff claimed that brake defect caused his car to hit wall, summary judgement for defendant manufacturer is granted because plaintiff did not have expert to testify that master cylinder failed, as claimed and plaintiff failed to negate a possible alternative cause for the accident. Under District of Columbia law, a plaintiff bringing a products liability action against a manufacturer may proceed without an expert on a general defect theory if the circumstantial evidence is sufficient for him to carry his burden.

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

Contracts-Covenants: Eastern Shore Markets Inc. v. J.D. Associates Limited Partnership, 213 F.3d 175 (4th Cir. 2000). Maryland law recognizes an implied covenant of good faith and fair dealing in all negotiated contracts, but the covenant of good faith and fair dealing does not obligate a party to take affirmative actions that the party is clearly not required to take under the contract; the duty simply prohibits one party from acting in such a manner as to prevent the other party from performing his obligations under the contract.

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