

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

Insurance - Effect of failure to cooperate: *Allstate v. State Farm*, 2001 WL 210271(Md.) An insurance company suffers actual prejudice when the insured fails to cooperate, resulting in the preclusion of the insurance company from offering evidence to generate a legitimate jury issue as to liability or damages. Under the Maryland Code '19-110 of the Insurance Article, an insurance company is not obligated to defend or indemnify for claims against its insured, if insured's failure to cooperate has caused insurance company actual prejudice.

Negligence - Necessity of expert testimony : *Desua v. Yokim*, 2001 WL 210093 (Md.) When a plaintiff suffers soft tissue injuries resulting from an automobile accident, absent a close nexus between the accident and injury, expert testimony is necessary to establish causation, as well as the reasonableness and fairness of the medical bills.

Insurance - Attaching proceeds of insurance policy:*Grey v. Allstate Ins. Co.*, 2001 WL 337406 (Md.) A guilty plea to vehicular manslaughter resulting in an order to pay restitution, does not obligate the defendant's automobile insurance company to pay under its policy for automobile insurance. Although the restitution order is entered as a civil judgment, it is essentially a criminal penalty, for which automobile insurance companies have no liability.

Insurance - Bad faith for refusal to settle:*Kremen v. Maryland Auto. Ins. Fund*, 2001 WL 366456 (Md.) When an insured claims bad faith on the part of its insurance company for failure to settle, and evidence exists to support such claim, the claim sounds in tort rather than contract. Further, the collateral source rule applies, meaning that any recovery by a plaintiff from an entity other than the defendant does not mitigate the damages owed by the defendant, therefore reducing the defendant's liability. Thus, the fact that the insured may have received compensation from another source does not absolve the tortfeasor from paying for damages.

Workers' Compensation - Exclusivity defense for employer/health care provider: *Suburban Hosp., Inc. v. Kirson*, No. 2, September Term, 2000. A hospital that is an employer and a health care provider of a claimant that has suffered an accidental injury pursuant to the Maryland Code, Labor and Employment Article ' 9-509, is afforded the exclusivity defense. The dual capacity theory requires that the second persona be totally separate and unrelated from the employment persona. When a hospital is an employer of a claimant that has suffered an accidental injury, yet is also the health care provider treating those injuries, the personas of each capacity are closely related. Thus, pursuant to the Maryland Code, Labor and Employment Article ' 9-509(a), the hospital's liability as an employer is exclusive.

MARYLAND COURT OF SPECIAL APPEALS

Workers' Compensation - Applicability of statute of limitations when benefit payment never received by claimant: *Zeitler-Reese v. Giant Food, Inc.*, 2001 WL 301379 (Md.) A claimant that has never received compensation payments may seek modification outside of the statutory period for doing such. The five-year limitation for modification of a Workers' Compensation Award does not expire, and a claim for modification is not barred, since the modification must be sought within five years of the last compensation payment, and the claimant has never received any payment of compensation.

Torts - Employer liability for malicious prosecution: *Southern Mgmt. Co. v. Taha*, 2001 WL 315358 (Md.) Former employee sues former employer and former co-employees, claiming, inter alia, that former employer and former co-employees filed unfounded burglary charges against him which constituted malicious prosecution. An employer can only be held liable for the conduct of its employees under a respondeat superior theory if the injured can prove his injuries were caused by an agent or employee of the employer, acting within the scope of his employment. If the individual employees are exonerated, the employer cannot be held liable for the injury, as the injury itself is a derivative of the individual employees' conduct.

Civil Procedure - Expert Opinions: *Dorsey v. Nold*, 362 Md. 241, 765 A.2d 79 (1998). A doctor who, in the course of his employment as a state medical examiner, performs an autopsy and forms an opinion as to the cause of death is not an expert whose opinion is prepared in anticipation of litigation or trial. Therefore, it was not mandatory that his identity be disclosed under Md. Rule 2-402(e)(1).

Civil Procedure - Injunctions: *El Bey v. Moorish Sci. Temple of Am.*, 362 Md. 339, 765 A.2d 132 (1998). Absent a clear showing of abuse of discretion, it was not in error for the trial court to issue injunctive relief, even though the party seeking the injunction did not adduce evidence that it would suffer irreparable harm. Granting or denying of a request for injunctive relief rests within the sound discretion of the trial court.

Defamation - Gohari v. Darvish, 363 Md. 42, 767 A. 2d 321 (2001). Former employee of franchisee sues franchisee for defamation. The defamation allegedly occurred with respect to statements made by franchisee to franchisor in connection with employee's application to own and operate his own franchise. The Court held that the common law afforded a qualified privilege to franchisee, and that the trial court's disallowance of franchisee's qualified privilege defense was not harmless error. Maryland Courts & Judicial Proceedings '5-423 states that a former employer is entitled to a qualified privilege where former employee expressly authorizes prospective employer to solicit information from former employer, and where a business relationship exists between former employer and prospective employer. Therefore, the franchisee had a qualified privilege when providing information to franchisor regarding prospective franchisee. Although franchisee did have a recognizable competitive interest with respect to prospective franchisee, this interest does not negate the existence of a qualified privilege.

UNITED STATES DISTRICT COURT District of Maryland

Civil Procedure - Disclosure of Experts ties to insurance companies: *Behler, III v. Hanlon*, 2001 WL 418752 (Md.) Plaintiff cannot be precluded from discovering information pertaining to defense expert's ties to insurance companies. This discovery is limited to the percentage of the expert's gross income earned on behalf of insurance companies or attorneys defending personal injury cases in the last five years, a list of those to whom the expert has provided such services in the same five years, and the name of each insurer for which he provided such services in the past ten years.

