

# 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.

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## MARYLAND COURT OF APPEALS

**Torts - Wrongful Death suit by parents on behalf of deceased passenger against the Estate of deceased driver, both sisters.** *William Bushey, Pers. Representative of Estate of Miranda Bushey, et al. v. Northern Assurance Co. of America*, 362 Md. 626, 766 A.2d 598 (2001). Parents of siblings killed in an automobile accident may bring an action against deceased driver's estate on behalf of deceased passenger. Parent-child immunity doctrine does not bar this suit because the preservation of the family relationship, which the immunity doctrine is intended to protect, is non-existent since the tortfeasor is dead. The Court determined that parents of deceased children can sue the estate of a deceased child on behalf of the other deceased child, however this is a factual determination.

## MARYLAND COURT OF SPECIAL APPEALS

**Products Liability - Liability of a handgun manufacturer for a fatality resulting from improper storage.** *Halliday, et al. v. Sturm, Ruger & Co., Inc., et al.*, 138 Md.App. 136, 770 A.2d 1072 (2001). A handgun manufacturer cannot be held liable under a products liability theory when a child fatally shoots himself while playing with the handgun, which the parent failed to store according to the manufacturer's directions. It is not foreseeable to the manufacturer that the purchaser would ignore clear warnings and instructions regarding storage of the handgun, and the manufacturer had taken steps to instruct the purchaser with respect to proper storage.

**Defamation - Privilege to defame arising in the context of litigation.** *Sodergren v. Johns Hopkins Univ. Applied Physics Lab., et al.*, 2001 WL 586732 Defamatory statements arising as part of a settlement negotiation are absolutely privileged. This absolute privilege extends to written expression. Additionally, the state has a legitimate interest in encouraging settlements. There is an absolute privilege concerning defamation, oral or written, arising out of settlement negotiations.

**Premises Liability - Admission of prior bad acts was error in this civil suit against landlord.** *Lewin Realty III, Inc. v. Brooks, Jr.*, 138 Md.App. 244, 771 A.2d 446 (2001). A \$750,000 jury award against a landlord for lead paint premises liability was reversed due to error of Circuit Court Judge in admitting prior bad acts into evidence. The Appellate Court determined that Maryland Rule 5-404(b), concerning "prior bad act" evidence, is applicable in civil as well as criminal cases. The evidence admitted at the trial concerned prior lead paint violation notices for other properties received by the agent, and not associated with the defendant. Admission of this evidence was error, and the case was remanded for further proceedings.

**Workers' Compensation - Exceptions to the going and coming rule.** *Globe Screen Printing Corp. v. Young*, 138 Md.App. 122, 770 A.2d 1064 (2001). Mr. Young was injured as a result of an assault that

took place on a public sidewalk between his place of employment and the employee parking lot. The Circuit Court previously determined that his injuries were covered by Workers' Compensation. The Court of Special Appeals reversed. Mr. Young relied on two exceptions to the going and coming rule: the "premises" exception and the "proximity" exception. However, the Court of Special Appeals determined that Mr. Young was not on his employer's premises at the time of the assault. Further, Mr. Young was not in such close proximity to his employment that he was placed at a greater risk of danger than the general public. Accordingly, the facts of this case did not fall within the ambit of the "premises" and "proximity" exceptions of the going and coming rule.

**Civil Procedure - Immunity under '5-603 and '5-604.** *McCoy v. Hatmaker*, 2000 WL 1874099 Motorist's estate and survivor brought wrongful death claim against city paramedic, city police officer, mayor and city council. Plaintiffs alleged failure of paramedic and police officer to perform CPR on deceased. The Court of Special Appeals determined that neither the paramedic nor the police officer committed a wilful act, or grossly negligent act or omission. The absence of a wilful act, or grossly negligent act or omission renders the paramedic and police officer immune from suit under both the Good Samaritan Act ('5-603) and the Fire and Rescue Company Act ('5-604).

**Torts - Parent sues for Medical Expenses of child, for whom parent is statutorily obligated to support.** *Freeburger v. Bichell*, 2000 WL 1874087 Parent of 18 year-old child injured in automobile accident sued driver for medical expenses. Parent claims a statutory duty to provide child with medical treatment and pay medical expenses under FL '13-102(b). Although this statute imposes a duty upon a parent to provide for a destitute adult child, it is conditioned upon the parent's ability to do so. However, the imposition of this duty does not create a separate tort cause of action. The Court of Special Appeals determined that the parent did not offer proof that he had means, or was able to earn sufficient means, to provide the child's medical expenses. For this reason, the Court granted Summary Judgment on behalf of the Defendant driver.

#### **UNITED STATES DISTRICT COURT DISTRICT OF MARYLAND**

**Torts - A claim of emotional distress does not require the claimant to submit to a mental examination.** *Patricia Ricks v. Abbott Labs.*, 198 F.R.D. 647 (2001). Plaintiff claimed Defendant caused her emotional distress resulting from discriminatory discharge from her employment. A defendant may not require a Plaintiff to submit to a mental examination for a claim of emotional distress, unless such emotional distress is of a severe nature, or a specific mental disorder is alleged. Otherwise, a jury is capable of assessing damages without the aid of a medical examination.

#### **DISTRICT OF COLUMBIA COURT OF APPEALS**

**Evidence - Admissibility of payment of fine in related civil action.** *Johnson v. Leuthongchak*, 772 A.2d 249 (2001). Payment of a traffic fine is inadmissible in a related civil action. Payment of a fine does not necessarily constitute an admission of guilt. There may be many reasons for paying a traffic fine, without an intention to concede guilt. Further, many courts have held that payment of a fine does not amount to an "admission by party-opponent", which would deem such admissible according to the Federal Rules of Evidence. Since payment of a fine is not inherently an admission of guilt, nor is it an "admission of party-opponent", it is inadmissible in a related civil matter.