

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

Civil Procedure - Effect of recent decision on statutory death penalty scheme. *Oken v. State*, 2001 WL 1591437 (Md.). The recent Supreme Court decision in *Apprendi v. New Jersey* does not render the statutory death penalty scheme invalid and apply retroactively. The legislative judgment to establish preponderance as the standard for weighing aggravating factors against mitigating factors does not constitute a violation of due process of law.

Workers' Compensation - exclusion of expert testimony regarding link between occupational stress and heart disease. *City of Frederick v. Shankle*, 2001 WL 1530654 (Md.). Police officers suffering from heart disabling heart disease are entitled to a statutory presumption that they have a compensable occupational disease. Trial judge did not err in striking expert testimony that there is never a link between occupational stress and heart disease, as this testimony would not assist the jury in determining causation, given the aforementioned presumption.

Personal injury - hotel guest sues for personal injuries resulting from gun shot wound while in hotel. *Lovelace v. Anderson*, 2001 WL 1525449 (Md.). A hotel guest sued off-duty police officer, owners of hotel, state, city and city police department for injuries resulting from a gun shot wound received when struck by bullet fired by officer (moonlighting as private security guard) during a robbery at the hotel. Intermediate court erred in granting summary judgment to officer and employer on grounds that officer was entitled to public official immunity, and that employers were not liable under respondeat superior theory. Plaintiff provided sufficient evidence that officer was acting within scope of employment at hotel, as a private guard, to preclude immunity for him or employer.

Civil Procedure - Injured may not sue physicians after obtaining judgment and filing satisfaction of judgment against other driver. *Underwood-Gary v. Matthews, et al.*, 2001 WL 1506043 (Md.). Auto accident victim sued treating physicians after obtaining judgment, and filing satisfaction of judgment, against other driver. Reversal of judgment affirmed, as petitioner failed to identify any new or independent injury that was not presented to the jury in the auto accident litigation.

Criminal procedure - jury review of unadmitted exhibits. *Merritt v. State*, 2001 WL 1543471 (Md.). Prejudicial error occurred when defendant's unadmitted exhibit was present in the jury room during deliberations. In light of the prejudicial nature of the unadmitted exhibit, mistakenly sent to the jury room during deliberations, defendant is entitled to a new trial.

MARYLAND COURT OF SPECIAL APPEALS

Insurance - An error in the writing, contrary to the agreement between the parties, did not allow

the carrier to deny coverage. *Allstate Insurance Co. v. Reliance Insurance Co, et al.*, 2001 WL 1524563 (Md.App.). Insurance application and policy stated in writing that the owners would occupy the home, however the owners told carrier's agent that they would not occupy the home. Due to the error in the writing, contrary to the parties' agreement, the doctrines of waiver and estoppel prevented the carrier from denying coverage.

Workers' Compensation - calculation of benefits with respect to third-party recoveries. *Chesapeake Haven Land Corporation v. Litzenberg*, 2001 WL 1518118 (Md.App.). Workers' Compensation Commission did not err in determining credit to employer/insurer when claimant received tort award for future economic loss from secondary employment. Third party recoveries for loss of future earnings from self-employment, that are excluded from calculation of benefits to be paid by compensation insurer, cannot be considered as part of insurer's subrogation interest.

UNITED STATES DISTRICT COURT, DISTRICT OF MARYLAND

Civil Procedure - multi-defendant civil rights claim, including state claims and federal claims, remanded to state court where only state claim exists. *Lanford. V. Prince George's County, et al.*, 2001 WL 1561167 (D. Md.) Multi-defendant civil rights claim, previously moved to federal court, remanded in part and denied in part. Claims against particular defendant that involved no federal issues are predominated by state law issues and remanded. Other state law claims, absent novel questions of state law, are pendent to federal claims.

UNITED STATES DISTRICT COURT DISTRICT OF COLUMBIA

Drug Regulation - did FDA act arbitrarily and capriciously. *American Bioscience, Inc. v. Thompson*, 269 F.3d 1077 (2001). Pharmaceutical company brought action seeking to enjoin FDA from approving competitor's Abbreviated New Drug Application (ANDA) for generic form of patented drug. The FDA acted arbitrarily and capriciously in removing new patent from Orange Book listing and approving ANDA without requiring competitor to address delisted patent.

Energy Regulation - FERC acted properly in conditionally approving merger of two utility holding companies. *Wabash Valley Power Association, Inc. v. FERC*, 268 F.3d 1105 (2001). FERC conditionally approved the petition for merger of two large regional utility holding companies, requiring the combined company to divest certain generation assets and share transmission capacity information. As this merger came about in the midst of sweeping regulatory changes in the industry, the FERC imposed "interim" mitigation measures to limit the combined company's market power. This FERC decision was not arbitrary nor capricious, and was "consistent with public interest."