

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

Tort - May a child sue for wrongful life. *Kassama v. Magat*, 2002 WL 172142 (Md.) In Maryland, a child does not have a right to sue for wrongful life where the only effect of the alleged negligence was non-termination of the pregnancy and birth of the child, because Maryland does not recognize life, even in an impaired state, as an injury.

MARYLAND COURT OF SPECIAL APPEALS

Toxic Tort - Real estate agents for rental properties are not "owners". *Dyer, et al. v. Criegler, et al.*, 142 Md.App. 109, 788 A.2d 227 (2002). Real estate agents/brokers that list and promote residential property for rental are not "owners" under the Lead Paint Act, and the Consumer Protection Act exempted real estate agent/broker from liability.

Negligence - Housing Authority of Baltimore City is not afforded governmental immunity from tort liability. *Gibson v. Housing Authority of Baltimore City*, 142 Md.App. 121, 788 A.2d 234 (2002). The Housing Authority of Baltimore City was sued by various persons either residing or visiting subsidized housing operated by the Housing Authority, due to elevated lead levels in their blood. Under the two-pronged test set forth in *Katz v. Washington Suburban Sanitary Commission*, the Housing Authority of Baltimore City is not immune from tort liability, as it manufactured its immunity by failing to maintain liability insurance as required by statute.

Intentional Tort - Exercising right to consult counsel before signing a written warning regarding job performance is valid grounds for discharge. *Porterfield v. Mascari II, Inc.*, 142 Md. App. 134,

788 A.2d 242 (2002). There was no error on the part of the Circuit Court in granting a Motion to Dismiss a wrongful discharge action after plaintiff was terminated for seeking to consult counsel before signing a written warning of inadequate job performance. Termination of employment for exercising a right to counsel, with or without the intention of a lawsuit, does not violate public policy.

Workers' Compensation - Employee injured on his way home from work while scaling a fence is not entitled to workers compensation benefits. *Henville v. Southwest Airlines*, 142 Md.App. 79, 788 A.2d 210 (2002). Employee injured on his way home, while scaling a fence to get into a parking lot where his car was parked, is not entitled to workers compensation benefits. The fence did not qualify as a special hazard to those who sensibly observed its purpose, nor was it provided by the employer, therefore, did not qualify under the going-and-coming rule.

Tort - Builder of a condominium building not liable to indemnify developer. *Heritage Harbour, L.L.C. v. John J Reynolds, Inc.*, 2002 WL 496417 (Md.App.) A condominium developer may not sue the builder for indemnification of damages in a separate suit brought by unit owners because the plaintiff failed to file the required expert's affidavit within the proscribed period of time; the suit is premature due to speculative damages; the plaintiff fails to show an imminent threat of serious injury to person or property in a tort suit for money to rectify structural problems.

Insurance - Must prejudice be proven when insured violates "no-action" clause of policy. *Phillips Way, Inc. v. American Equity Insurance Company*, 2002 WL 484840 (Md. App.) Proof of prejudice to the insurer is not required when an insured violates a "no-action" clause of a policy. Prejudice is only required to be proven when the insurer raises a defense of failure to cooperate or lack of notice.

Negligence - An owner of land, used for recreational purposes, may not be sued in negligence for personal injuries sustained by a jogger. *Fagerhus v. Host Marriott Corporation*, 2002 WL 484851 (Md.App.) Owner of property owes no duty of care to keep premises safe, when premises is used for recreational purposes pursuant to National Resources Article, Section 5-1101.

Negligence - contributory negligence of pedestrian in crosswalk. *Abolson v. Dollahitte*, 142 Md.App. 706, 791 A.2d 986 (2002). Pedestrian found to be contributorily negligent as a matter of law when pedestrian stepped off the median after the signal not to walk had begun flashing and pedestrian was struck by an automobile.

Workers' Compensation - payment of attorneys fees upon death of claimant. *Hood v. Alltrista Corporation*, 2002 WL 334386 (Md.App.) No attorneys fees were to be paid by the Workers Compensation Commission for work performed on behalf of the claimant upon claimant's death during her pending permanent disability claim. The claimant had no dependents.

Workers' Compensation - definition of a covered employee under the Workers' Compensation Act. *Watson v. Twin City Fire Insurance Company*, 2002 WL 334332 (Md.App.) Claimant, a sole proprietor of a home improvement business, was not entitled to benefits even though he purchased insurance for the business, he failed to comply with the statutory requirement to notify the Commission that he chose to be a covered employee.

Antitrust - Software licensing under the Maryland Antitrust Act. *Davidson v. Microsoft Corporation*, 2001 WL 1795151 (Md.App.) The Windows 98 license agreement failed to establish a direct relationship with Microsoft, as required for a computer purchaser to recover overcharges under the Maryland Antitrust Act.

Insurance - Failure to pay a claim based on an arbitrary and capricious reason. *Berkshire Life Insurance Company v. Maryland Insurance Administration*, 142 Md.App. 628, 791 A.2d 942 (2002).

An insurer who refused to pay a claim, based on arbitrary and capricious reasons, was properly ordered to pay restitution to the insured.

For full text of the above opinions, click on www.courts.state.md.us or e-mail schmielerj@sslawfirm.com

