

W&S

2006 CENTENNIAL YEAR

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Viewpoints

Volume 18 Spring 2007

Wright, Constable & Skeen, LLP is Proud to Announce

At the Annual Meeting of the Bar Association of Baltimore City (BABC), Young Lawyers' Division Council, and Baltimore Bar Foundation, Inc. held on May 23, 2007, the following Wright, Constable & Skeen attorneys were appointed to new positions:



Mary Alice Smolarek, Esq., Partner
President, Baltimore Bar Foundation, Inc.
Vice President, BABC
Chair, Personnel Committee

Ms. Smolarek served as Secretary (2005-2006) and Treasurer (2006-2007) of the Baltimore Bar Foundation and BABC, and is a past chair of the Legal Services to the Elderly Committee and of the

Membership Committee of the BABC. Ms. Smolarek is also a Life Fellow of the Baltimore Bar Foundation.



Mollie G. Shuman, Esq., Associate
Chair, Young Lawyers' Division Council, BABC

Ms. Shuman previously served as Secretary and Chair of the Continuing Legal Education Committee of the Young Lawyers' division as well as an Elected Member of the Executive Council of the BABC.



Michael A. Stanley, Esq., Partner
Young Lawyers' Division Council, BABC
Co-Chair, Events Committee



Meighan G. Burton, Esq., Associate
Young Lawyers' Division Council, BABC
Co-Chair, Public Service Committee

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Firm attorneys also serve the BABC in the following capacities:

Robert W. Hesselbacher, Jr., Esq., Partner
Chair, Fee Arbitration Committee

Frederick L. Kobb, Esq., Partner
Chair, Family Law Committee

Marine Insurance And The Doctrine Of Uberrimae Fidei

By Stephen F. White

While Latin is often referred to as a “dead language” it is still alive and well in the ancient principles of marine insurance. In particular, the doctrine of *uberrimae fidei* still lives on. When translated, this Latin phrase refers to the duty of “utmost good faith and fair dealing.” This is the duty owed by a vessel owner to a marine insurer whenever he applies for a policy of marine insurance.

The doctrine of *uberrimae fidei* traces its origins to the days of sail, when a vessel owner seeking insurance for a hazardous voyage would venture into one of the London pubs where marine insurance underwriters (who later became Lloyds of London) first carried out their business. In those days, the underwriters had to place great reliance upon the representations of the owner regarding the seaworthiness of his vessel, the risks of the voyage, and his prior claims history. Each vessel was unique, and there was no database of vessel inspections or claims history for the underwriters to consult in evaluating the risk. A marine survey could not be conducted on a vessel in a far away port and faxed to the insurer overnight. The underwriters would make coverage decisions on the spot, and would set the premium based upon the presumption that the applicant’s representations were true, and that no material facts bearing upon the risk of loss had been concealed or misrepresented. In the event it was later discovered that the seaworthiness of the ship or the risks of the adventure had been concealed or misrepresented, it was the insurer’s option to void the policy and refuse to pay claims.

With respect to marine insurance, the doctrine of *uberrimae fidei* remains valid in most states today. When applying for insurance, the vessel owner has an absolute duty to disclose to the insurer every known fact that may bear upon the risk of loss, *even though no inquiry is made*. It is not enough to simply answer the questions on the insurance application. If there are facts known to the vessel owner which might affect the risk of loss, but which are not



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specifically inquired into on the application, it is the vessel owner’s duty to voluntarily disclose these facts. This can be a trap for the unwary, since the vessel owner who seeks to lower his insurance premium is under terrific pressure not to disclose negative claims history or problems with the condition of his vessel. In most places, such an affirmative duty of disclosure is not present when applying for car insurance, homeowners insurance, or other common forms of coverage where it is enough to simply answer the questions on the application. However, with respect to marine insurance it is better to err on the side of disclosure, since the entire purpose of having the insurance could be frustrated if a claim is made, but coverage is denied or voided because the insurer discovers that the boat owner concealed material facts relating to unseaworthy conditions or negative loss history. “Material” facts are those facts that, if known, would affect the insurer’s decision whether to issue the policy or the amount of premium charged for the coverage.

In recent cases the duty of *uberrimae fidei* has been breached, and marine insurance policies have been voided, due to material mistakes such as failing to name the correct owner on the application (e.g., corporations may be charged a higher premium); failing to reveal prior insurance claims and vessel losses; overstating the value of the vessel; incorrectly describing the vessel

(e.g., its age and model), its engines (e.g., gas vs. diesel) and equipment (e.g., fire-fighting systems); failing to disclose unseaworthy conditions; failing to disclose intended commercial use; failing to personally sign the application (where signature by only the owner himself is required); and knowingly hiring an incompetent marine surveyor to perform the pre-insurance vessel survey.

Boat owners are not commonly given any instructions with regard to the doctrine of *uberrimae fidei* at the time they apply for marine insurance. They are simply bound by notions of fair play and the expectation that they will appreciate the importance of making full disclosure to the insurer of every known fact that is material to the risk of loss. While commercial operators tend to be more familiar with their obligations in this regard, most recreational boaters have no idea that the doctrine even exists. While some writers have criticized the duty of utmost good faith and fair dealing as an antiquated notion, others have praised it as an enduring example of the ideals to which everyone in society was once expected to adhere. Regardless of which faction wins this debate, *uberrimae fidei* remains part of the law of marine insurance. Vessel owners and operators must continue to act with utmost good faith and fair dealing when applying for marine insurance. [WCS](#)

WCS

2006 CENTENNIAL YEAR

A CENTURY OF
EXPERIENCE
A CONTINUATION OF
EXCELLENCE

The 2007 Laws of Maryland: A Legislative Session Summary

By Meighan G. Burton

The 2007 General Assembly of Maryland was busy this session. Yet, out of over 2,400 “bills” (i.e., proposed amendments to Maryland law), only about 100 were enacted. Below is a brief summary of some of the bills that passed, and some that failed.

Tort Law

Personal Injury Settlements

The General Assembly enacted a law increasing to 60 the number of days, during which an injured person can void a personal injury settlement and release agreement. This applies only to injured persons who signed a settlement agreement or release within 30 days of their injury, and who were not represented by an attorney when they signed the release (Senate Bill 368/House Bill 387).

Contributory Negligence

Maryland is one of only five states that adhere to the law of contributory negligence, under which an injured plaintiff who is found responsible even in small part for his or her injury is barred from any recovery, even against a negligent defendant. Legislators again introduced a bill that would have changed Maryland’s contributory negligence law to one of comparative negligence. Comparative negligence allows a plaintiff who is less than 50% responsible for his injury to recover proportionate damages based on the defendant’s percentage of fault. This bill failed (Senate Bill 267/House Bill 110).

Family Law

Focus on Child Support

The General Assembly passed several bills that create incentives and penalties which encourage the prompt payment of child support. One new law authorizes suspension of an attorney’s license if the attorney’s child support payments are more than 120 days in arrears (HB 792).

The statutory child support guidelines, which are used to calculate child support,



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will also change. Under the current guidelines, the parent carrying a child’s health insurance can deduct the insurance premium paid for the child’s coverage directly from that parent’s support obligation. The new law will add the health insurance premium to the total child support obligation, before that total amount is allocated between the parents, resulting in a more equitable distribution of the health insurance cost (SB 503/HB 265).

Protection for Pets

Strides were made in favor of the family pet this session. A dog cannot be tied or restrained outdoors in a manner that unreasonably restricts its movement or access to food, water or shelter. The dog also cannot be restrained in an unsanitary or unsafe area, or with a collar that is primarily metal or less than one inch larger in circumference than the dog’s neck. Violation of this law is a misdemeanor carrying a penalty of 90 days in jail or a fine of up to \$1,000 (SB 696).

Alcohol, Tobacco & Firearms

Alcohol: AWOL is Now Illegal

A bill prohibiting the possession, purchase, sale or use of alcohol without liquid (“AWOL”) machines passed (HB 670). A proposed law that would have increased

the number of winery special events permits issued (HB522/SB425), and a bill that would have authorized an employer to use a breath measurement device to test employees for alcohol use (HB743), failed.

Cigarettes: Focus on Public Health & Safety

A bill requiring all cigarettes sold in the state after July 1, 2008 to be self-extinguishing (HB 785) passed. The statewide smoking ban also passed (SB 91/ HB 359). As of February 1, 2008, all indoor places of employment and indoor places open to the public must be smoke-free, including bars and restaurants. Certain businesses are automatically exempted from the law, including tobacco shops. Businesses which can show that significant harm will result from the application of the new law are eligible for an exemption.

Guns: No Ban on Assault Weapons

The Maryland Assault Weapons Ban, which would have banned the sale and possession of semiautomatic “assault long guns,” (SB 43) failed.

Gambling: Okay for Charities, But Slot Bill Fails Again

The General Assembly passed several laws that expand the definition of charitable organizations able to hold gambling events and operate slot machines for fundraising/non-profit purposes (HB 1310, SB 868/HB 1278, SB 926/HB 1391) and ease restrictions and requirements.

Bills that would place video lottery terminals at racetracks, on boats and at other locations throughout the state failed. A bill to allow a vote on the subject during the November 2008 elections also failed. (HB 17, 166, SB 541, SB 950).

Insurance

Following Hurricanes Isabel and Katrina, and in response to allegations of systemic unfair practices in the automobile insurance industry, the General Assembly

passed several bills which create additional remedies for an insured whose property and casualty insurer has failed to act in good faith in resolving the insured's own "first-party" claims. In addition to actual damages, an insured will now be able to recover litigation costs, interest and attorneys fees (SB 389/HB 425).

Also a new law will require an insurer which delivers a check in excess of \$2,000 to claimant's attorneys in payment of a third-party claim (a claim asserted by someone other than the insured) to provide notice of that payment to the third-party claimant (SB 156).

Life Insurance: Rights for Domestic Partners

Insurers providing life insurance may now extend coverage to domestic partners of an insured employee as a result of Senate Bill 1022.

Homeowner's Insurance: Coastal Areas

In response to many insurers' refusal to insure homes in certain coastal areas as a result of the large increase in claims resulting from hurricane damage, House Bill 1442 has established the Task Force on the Availability and Affordability of Property Insurance in Coastal Areas to study and report regarding methods to ensure the continued availability of insurance for these homes.

Auto Insurance

It is now insurance fraud for a person to organize or plan a motor vehicle accident, or to create documentation of an accident that did not occur, for the purpose of submitting a claim under an automobile insurance policy (HB 1049).

A bill which would have banned the practice of defining a territory by zip code for purposes of setting automobile insurance rates (HB 7) failed.

Employment & the Economy

Government Contracts Require Heightened Minimum Wage

One of the most controversial bills passed this session involved the "living wage." Contractors and subcontractors working under State procurement contracts will now be required to pay a minimum wage

of \$11.50 per hour in urban areas and \$8.50 per hour in other areas (HB 430). [For further discussion on the living wage, see Article by Jason Potter at page 5.]

Employment Discrimination: Now a Maryland Cause of Action

Maryland now recognizes a cause of action for employment discrimination regardless of employer size, bringing the State into alignment with most other states' laws and the federal Civil Rights Acts (Senate Bill 678 and House Bill 314).

Worker's Compensation

Employers are now exempt from providing coverage for domestic workers who earn less than \$1,000 per quarter (HB 277). Non-collegiate private school students placed in an unpaid work-based learning experience will be considered a covered employee for the purpose of worker's compensation (HB 271).

Maryland's Response to Base Realignment and Closure Act

The federal Defense Base Realignment and Closure Act of 1990 will bring approximately 16,000 new military and civilian jobs into Maryland between 2005 and 2011. In response, the General Assembly has created a sub-cabinet to coordinate and oversee the implementation of BRAC-related development and other initiatives in Maryland (SB 110) and a committee that will provide legislative oversight for the State's response to BRAC-related demands, including housing, education, and health care (HB 1320).

Phase-out of Ground Rents

Prospective and current homeowners, particularly in Baltimore City, will be pleased to know that the establishment of new ground rents after January 22, 2007 is prohibited (Senate Bill 106). Also, all previously established ground rent owners must register their properties with the Department of Assessments and Taxation by September 30, 2010, or the ground rent will be non-collectible and the reversionary interest in the property extinguished (SB 622/HB 580). Finally, a ground rent owner will no longer be able to eject the property owner for failure to pay ground rent, but can only obtain a lien or a money judgment for the past due rents (SB 396).

Licenses and Permits

Debt purchasers who collect consumer debt are now subject to regulation by the State Collection Agency Licensing Board (HB 1324), where the consumer is in default at the time of the acquisition of the debt. Carroll County Commissioners are now permitted to license and regulate pawnbrokers (SB 844).

Environmental Law

Maryland Won't Address Climate Change

The Public Service Commission is now required to take steps to improve Maryland's use of solar energy and create incentives to develop renewable energy generating facilities, including wind power (SB 595). Several bills that encourage and provide funding for forest conservation and reforestation activities also passed (HB 1429; SB 573/HB 588).

However, the vast majority of environmental bills, proposed largely in response to Al Gore's 2006 climate-change novel and documentary "An Inconvenient Truth," including bills that would have created offices and committees to address climate change, set greenhouse gas emissions limits, and examine long-term energy strategies failed (SB 409 / HB 890, SB 333, HB 703).

The Chesapeake Bay

Proposed laws affecting the Chesapeake Bay had mixed success. Oysters, clams and other shellfish will benefit from new laws which limit their harvesting. Other new laws will similarly protect diamond-back terrapins, yellow perch and snapping turtles.

Efforts in support of Bay restoration failed, including Senate Bill 901, which would have created a "Green Fund" for bay restoration, and Senate Bill 215, which would have established a committee to study potential reforms to the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program.

Education: Tuition Freeze

The legislature increased funding for construction of new schools and for higher

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New Maryland Living Wage Law Creates Higher Minimum Wages for Government Contractors

By Jason R. Potter

On May 8, 2007, perhaps the most contentious bill of the legislative session was signed into law. The so-called “living wage” law is the first such state law of its kind in the country. The law requires employers who enter into certain contracts with the State of Maryland to pay their employees a wage higher than Maryland’s \$6.15 hourly minimum. The amount of the “living wage” depends on the geographic area where the contract is performed. As an example, hourly rates required in the Baltimore-Washington metro area are higher than those required in other parts of the State.

The law goes into effect on October 1, 2007 and applies to (a) employees of businesses working on a State service contract worth at least \$100,000, who (b) perform at least one half of their weekly work on that contract. The law obligates businesses to pay those employees a minimum hourly rate of \$11.30 when more than half of the contract work is performed within the so-



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called “Tier I” counties of Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore, as well as Baltimore City. If more than half of the contract is performed elsewhere, in a “Tier II” area, businesses must pay their employees \$8.50 per hour. Each invitation to bid will indicate whether the contract is to be performed in a Tier I or Tier II area. The higher rates will apply only for the duration of the contract.

The law attempts to lessen the economic burden imposed upon employers by exempting certain businesses and giving credit for certain employer-subsidized health insurance. For example, businesses with fewer than 10 employees are exempt if the contract value is less than \$500,000. Non-profits, public service organizations and many government agencies are also exempt. Further, the law does not apply to

employees 17 years old or younger or to employees who work fewer than 13 consecutive weeks. In addition, if a contractor’s bid or proposal indicates that it will provide employee health insurance, the cost of providing such insurance may be subtracted from the new minimum hourly wages. The above exemptions apply only to the statewide “living wage” law and do not affect similar “living wage” laws enacted in Baltimore City, Montgomery County and Prince George’s County.

Employers subject to the new law must post a notice of the “living wage” rates as well as employees’ rights under the new law. The notice must also contain the contact information for the Commissioner of the Maryland Department of Labor, Licensing and Regulation, who oversees compliance. Because the wage rates are adjusted for inflation at the start of each fiscal year, employers need to keep abreast of the new rates, which will be posted on the DLLR’s website, www.dllr.state.md.us.

An employer violating the new law will be assessed a penalty of \$50 or less per violation. Employees may submit confidential complaints to the Commissioner and, if a violation is found, the Commissioner may order the employer to pay \$20 per day in liquidated damages to the State, even if restitution has already been paid to the employee.

If you have questions about Maryland’s living wage law or would like further information, please contact Jason R. Potter at Wright, Constable & Skeen, LLP. 

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education as a whole. Other new laws will freeze tuition at University System of Maryland schools and Morgan State University at the rates charged during 2005-06 (SB 108/HB 134), increase the maximum annual Maryland Senatorial Scholarship Program award to the equivalent of undergraduate annual tuition and fees at a University System school (SB 604), and create other new scholarships.

Transportation

Continuation of Rail Service

The General Assembly passed bills that will ensure that the current level of MTA passenger rail service between Perryville and Penn Station and between Frederick and Point of Rocks will continue at the same or greater levels (SB 438, HB 770).

Maryland Driver's Licenses Fail to Meet Federal Standards

The federal REAL ID Act of 2005 sets national standards for the issuance of state driver's licenses and identification cards.

As of May 11, 2008, only states with identification cards and licenses issued in compliance with the REAL ID Act will be considered valid for federal purposes, which may include air travel and entering federal buildings. The General Assembly failed to pass bills that would have, among other things, required the MVA to report to the General Assembly and the Governor regarding the expected cost of compliance with the Act and prohibited the Motor Vehicle Administration from issuing Maryland driver's licenses to individuals who cannot provide documentation that certifies lawful presence in the United States. (HB 1381, SB 799, SB 184, HB 537 and HB 11).

Driving with Cell Phones

Efforts to ban use of cell phones while driving also failed (SB 44, SB 30, HB 86).

Chesapeake Bay Bridge: Options Open for a New Crossing

Between 2004 and 2006, the Task Force on Traffic Capacity across the Chesapeake

Bay examined the number of vehicles crossing the Chesapeake Bay Bridge, and projects that by 2025, the 2001 traffic figures will increase by 41%. However, the Task Force failed to determine where a new bridge crossing should be located. Several bills that would have prohibited the Department of Transportation from considering a new Bay crossing in or through Kent County (SB 42, HB 981) were proposed. These bills would also have encouraged consideration of reestablishing a Bay crossing by ferry. These bills failed.

The 2008 General Assembly will be considering numerous revenue-enhancing bills to address the State deficit. Many such bills were presented in 2007 and held over for presentation in 2008 or a special session. [W&S](#)