

## *Weekly Wright Report* (8/21/17)

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### NEGLIGENCE

#### **Can a Pedestrian Struck By a Car be Contributorily Negligent?**

Most people likely think that a driver who strikes a pedestrian in a crosswalk is automatically liable. In the recent decision of *Woolridge v. Abrishami*, decided July 6, 2017, the Maryland Court of Special Appeals reiterated that this is not so. The Court affirmed a jury verdict in favor of the defendant driver because the jury found that both the driver and the pedestrian had been negligent.

Maryland is one of the few states that bar a plaintiff from recovering from a negligent defendant if the plaintiff also was negligent. In general, a motor vehicle must yield to a pedestrian who is in a crosswalk, and a driver who does not do so may be found negligent, as well as being subject to conviction for a violation of the Maryland motor vehicle code. A pedestrian's right-of-way, however, is not absolute. Rather, a pedestrian has an obligation to look for traffic and exercise care for her safety. If she does not do so, she may be found to have been contributorily negligent, barring any civil recovery from the driver.

In *Woolridge*, a pedestrian was struck by a turning car while she was walking in a crosswalk. She testified that she stepped off the curb without observing any vehicles approaching, and she did not see the defendant's car until it struck her. Because the testimony at trial indicated that the car was almost all the way through its turn when it struck the pedestrian the Court of Special Appeals found there was a reasonable inference that the pedestrian failed to take proper care to observe the car. Accordingly, the issue of contributory negligence was held to be an issue of fact for the jury to decide. Ask Bob [rhesselbacher@wcsllaw.com](mailto:rhesselbacher@wcsllaw.com)

### EMPLOYMENT LAW

#### **Can a Company Terminate an Employee For Positive Screen for Marijuana? The Answer is Not So Obvious**

Katelin Noffsinger applied for and was offered a position of Director of Recreational Therapy at a Connecticut nursing home. Prior to her application, Noffsinger had been diagnosed with post-traumatic stress disorder (PTSD) and was prescribed medical marijuana for her disability. Around the time she was made a job offer, she disclosed that she used prescription marijuana for medical reasons.



Following a pre-employment drug screen, Noffsinger tested positive for cannabis and the nursing home rescinded the employment offer. Noffsinger brought a lawsuit alleging, among other claims, that the facility had discriminated against her in violation of the state law allowing medical marijuana use. Under Connecticut's Palliative Use of Marijuana Act (PUMA), qualified patients with debilitating medical conditions can legally be prescribed medical marijuana. PUMA also prohibits employers from discriminating against employees or applicants who are qualifying patients or primary caregivers of a qualifying patient. The nursing home defended the lawsuit by arguing that the federal Controlled Substances Act (CSA), which prohibits any use of marijuana, preempts Connecticut's law permitting medical marijuana. The court, however, held that Noffsinger can proceed with her private right of action under PUMA and that federal law did not preempt the more lenient Connecticut law.

Courts in Oregon and Massachusetts, that have legalized the use of medical and/or recreational marijuana, have held that because federal law prohibits all use of marijuana, employers may terminate or refuse to hire employees who test positive for marijuana.

This is not the end of these types of employee challenges under the evolving states laws that permit medical marijuana prescriptions. Know your rights and liabilities as an employer before you take any significant employment actions. Ask Laura [lrubenstein@wcslaw.com](mailto:lrubenstein@wcslaw.com)

## **LABOR LAW**

### **No Recording Policies**

The Second Circuit recently affirmed the National Labor Relations Board's (NLRB's) decision that no-recording policies violate Section 8(a)(1) of the National Labor Relations Act (NLRA). The court found that Whole Foods' policy, which generally prohibited all recording (audio, video and image) in the workplace absent prior approval, inhibited employees' Section 7 rights (Section 7) to self-organize and engage in concerted activities. Ask Don [dwalsh@wcslaw.com](mailto:dwalsh@wcslaw.com)