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Facts: Janet Miller, petitioner, worked in the Comptroller's Office where part of her duties was to conduct audits at field locations going directly to remote locations from her home. At the time petitioner began working in that office, the Comptroller's policy was that an employee who was required to drive directly to a remote work site from her home was entitled to time compensation for only that period of time that exceeded her normal commute time by thirty minutes.

Approximately two years after she began her employment, she was informed by a union representative that the Comptroller was required, under COMAR 17.04.11.02B(1)(j), to pay her for the time from when she left her home, until she arrived at a remote audit location. Petitioner then filed a grievance with the Comptroller in which she sought payment for her time traveling from home to the remote audit location. A decision was issued in the first step of the grievance process which authorized compensation for all travel time in excess of petitioner's normal commute time, but the period of such compensation was limited to commutes taking place within a 30 day period prior to the filing of the grievance. Petitioner appealed that first-step decision, contending that she should be entitled to compensation for the entire period of her travel to a remote site and not just the period of time in excess of her normal commute. She also challenged the 30 day limitation.

The decision in the second-step appeal affirmed the first-step decision except that the 30 day period was reduced to 20 days in order to comply with Maryland Code (1993, 2004 Repl.

Vol.), § 12-203(b) of the State Personnel and Pensions Article.

Petitioner then filed a third-step appeal. Petitioner asserted her original argument and that she was entitled to back compensatory pay despite the limitation of the 20 day period that had been one aspect of the second-step decision. On the primary issue, the ALJ decided on behalf of petitioner and against the Comptroller. Ultimately, however, the ALJ dismissed the grievance, finding that petitioner did not meet her burden with respect to demonstrating that she is entitled to uncompensated work time.

Both parties sought judicial review. The Circuit Court agreed with the ALJ that the Comptroller's revised travel policy was not supported by law. That court, however, remanded the case back to the Office of Administrative Hearings for a further hearing, presumably in order for petitioner to present evidence before an ALJ to establish what compensation she was due. The Comptroller appealed to the Court of Special Appeals and that court reversed the decision of the Circuit Court and the decision of the ALJ. The Court of Appeals granted certiorari.

Held: Affirmed. The Court of Appeals held that COMAR 17.04.11.02B(1)(j) does not entitle employees to compensation for all time spent traveling between home and a work site other than their assigned office and that § 12-203(b) of the State Personnel and Pensions Article requires a remedy to be limited to compensation for claims existing within 20 days prior to the initiation of a grievance.

Janet M. Miller v. Comptroller of Maryland, No. 70, September Term, 2006. Opinion filed on April 10, 2007 by Cathell, J.

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Facts: In 1999, Angela and Carnell Dawson, along with five of their children, moved into 1401 East Preston Street in the East Oliver neighborhood of Baltimore City. In the Spring of 2002, Baltimore City launched its "Believe Campaign to Combat Drug Trafficking." Appellants, relatives of the Dawsons, maintained that the City's "Believe Campaign" pro-actively "solicited and encouraged Baltimore residents, including the Dawsons, to participate in the program by reporting illegal drug activities in their neighborhoods." Appellants also asserted that the campaign was instituted even though the City "plainly knew or had reason to know that they were not able to provide adequate protection for responding witnesses." Appellants assert that the City, despite knowing that it did not have the ability to protect witnesses, launched the Believe Campaign in "the midst of a violent retaliatory drug culture in certain areas of Baltimore City, where lack of witness cooperation was commonplace due to well-founded fear of retaliation."

Between January 1, 2000, and October 16, 2002, a total of 109 calls were made by the Dawson family to 911 or 311. The calls were generally made to report drug activity or disorderly

persons in the vicinity of the Dawson family home. According to the appellants, the Baltimore City Police Department (the "BCPD") did not respond to these calls quickly and sometimes failed to respond at all. When the BCPD did respond, the officers would go directly to the Dawson family home, "indicating to the entire neighborhood, including the drug dealers, that it was the Dawsons who had called the police."

According to appellants, the drug dealers, made aware that the Dawsons were reporting them to the BCPD, began to threaten and attack members of the family in order to prevent future calls to the BCPD. Appellants alleged that the drug dealers engaged in a series of escalating intimidation tactics i.e. vandalism of the family home, throwing bricks through windows of the home, and assaults.

Appellants alleged that on October 1, 2002, John Henry and several other men surrounded the Dawson family home and threatened to "bust up [the home's] windows and shoot up my house." On October 2, 2002, the BCPD apparently arrested John Henry, but he was released that same day. Appellants allege that the next day, October 3, 2002, at approximately 3:15 am, a Molotov Cocktail was thrown through the kitchen window of their home. Angela Dawson was able to extinguish the fire and the family was able to exit the house without serious bodily harm.

Appellants asserted that the BCPD, in response to the Molotov Cocktail incident, promised to give the Dawsons increased protection by placing them on a "Special Attention List" and that the police "advised the Dawsons to move out of their home." Appellants also alleged that an individual within the Baltimore City State's Attorney's office verbally offered protection to the Dawsons, but never followed up with the necessary referrals or paperwork. According to the appellants, the Dawsons were neither placed on the Special Attention List nor into the State's Attorney's witness protection program.

Early in the morning on October 16, 2002, appellants alleged that Darrell Brooks, a local drug dealer, "kicked down the Dawsons' front door, poured gasoline on their living-room floor, and set it ablaze." Carnell and Angela Dawson, along with their five children – all under the age of fourteen – died as a result of injuries suffered in the fire.

Held: Affirmed. The Court of Appeals held that the Circuit Court for Baltimore City was correct as a matter of law when it found that the state-created danger theory did not apply under the circumstances of this case and that a special relationship

did not exist between the appellees and the Dawson family. The Court further held that the trial court did not err in dismissing the case prior to discovery being conducted.

Alice McNack, et. al., v. State of Maryland, et al., No. 98, September Term, 2006. Opinion filed on April 12, 2007,by Cathell J.

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COURTS - JURISDICTION - MOOTNESS

Facts: The Department of Human Resources, Child Care Administration (CCA), notified the appellee, the proprietor of a registered day care facility, of its intention, based on findings, following an investigation, that she had hit and inappropriately supervised children in her care, to revoke her family day care registration. Appellee appealed the revocation to the Office of Administrative Hearings. An administrative law judge affirmed the revocation decision, after a hearing.

Appellee filed a petition for judicial review in the Circuit Court for Harford County. After a hearing, that court reversed the CCA's revocation of the appellee's family day care registration, finding that "there were no regulations in effect in November 2000 that delegated the authority to revoke family day care licenses to CCA." The court reasoned that, although there were regulations delegating revocation authority, they delegated that authority to the Office of Child Care Licensing and Regulation (OCCLR), the CCA's predecessor, and those regulations had not been amended, when CCA revoked Ms. Roth's registration, to delegate the revocation authority to the CCA.

The CCA timely noted an appeal to the Court of Special Appeals. This Court, on its own motion, and prior to proceedings in that court, issued a writ of certiorari to the intermediate appellate court.

Held: *Judgment Of The Circuit Court For Harford County Vacated And Case Remanded To That Court With Instructions To Affirm The Decision Of The Department Of Human Resources, Costs To Be Paid By The Appellant.* "A case is moot when there is no longer any existing controversy between the parties at the time that the case is before the court, or when the court can no longer fashion an effective remedy." In re Kaela C., 394 Md. 432, 452, 906 A.2d 915, 927 (2006). In October 2001, the relevant portions of the Code of Maryland Regulations 07.04.01.02 and 07.04.01.47 were amended, changing the language from the "Office of Child Care Licensing and Regulation" to the "Child Care Administration." Thus, there was no longer any existing controversy between the parties.

Department of Human Resources, Child Care Administration v. Andrea Roth, No. 22, September Term, 2004. Filed March 22, 2007. Opinion by Bell, C.J.

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CRIMINAL LAW – SEARCH AND SEIZURE

Facts: On April 27, 2005, Baltimore City Police Department police officers were in a marked police cruiser near the intersection of Oswego Avenue and Park Heights Avenue in Baltimore City, an area described as an "open air drug market," and "known for violent crime and drug distribution activity." The officers observed a tan sports utility vehicle parked on the side of the road, which was occupied by two individuals: a man in the driver's seat, later identified as Lewis, and a woman in the front passenger's seat, subsequently identified as Ms. Parksdale. According to the officers, Lewis and Parksdale started acting nervously, abruptly pushing their hands down under the vehicle's console. The officers then proceeded past Lewis's vehicle, and stopped the police cruiser in the street, a little bit in front of the SUV. At that point, Lewis activated his turn signal and started to pull out into the street nearly striking

the back of the police vehicle. The officers then pulled to the side of the road, and got out to approach the vehicle. For officer safety, the police asked the defendant to exit his SUV. When he did so a cell phone and a plastic bag containing marijuana fell to the ground.

The vehicle was not placed in park, however, and it drifted, driverless, approximately twenty feet down the street. After an officer ran and jumped in the vehicle, put the brakes on it and put the car in park, the officer searched the vehicle to ascertain whether there was any other marijuana in the vehicle. Between the passenger side seat and the center console, the officer found a marijuana cigarette, which was recovered. Subsequently, Lewis admitted to the officers that the marijuana found was his, and that Parksdale did not have anything to do with it.

Lewis was subsequently charged with possession of a controlled dangerous substance, marijuana, in violation of Section 5-601 (c)(2) of the Criminal Law Article. Prior to trial, Lewis filed a motion to suppress the marijuana that was seized from him, as well as the subsequent statements. The State argued that the incident with Lewis was equivalent to an investigatory traffic stop because the officers had the right to stop Lewis when his SUV "almost" hit the police cruiser when Lewis pulled away from the curb. Conversely, Lewis's counsel argued that the fact that Lewis put on his turn signal, looked at the officers, and then pulled into the street "almost" hitting the police car did not provide reasonable articulable suspicion to effectuate a stop because there was no traffic infraction. The Judge granted the suppression motion as to the evidence of the discarded marijuana cigarette and Lewis's statements of ownership, but denied the motion as to the plastic bag of marijuana that fell from the vehicle when Lewis got out of the SUV.

Lewis was convicted of possession of a controlled dangerous substance, marijuana, and sentenced to one year imprisonment. Lewis noted an appeal to the Court of Special Appeals challenging the denial of his motion with respect to the marijuana, and subsequently the Court of Appeals issued, on its own initiative, a writ of certiorari prior to any proceedings in the intermediate appellate court.

Held: Reversed. The trial court erred in denying Lewis's motion to suppress the marijuana because the police did not have justification to conduct the investigatory traffic stop based upon the fact that Lewis "almost" hit the police car. The Court

noted that police have the right to stop and detain the operator of a vehicle when they witness a violation of a traffic law. However, in this case, no traffic violation was articulated, and the Court explained that lawfully operating a vehicle is an "innocent activity," which can only raise an articulable reasonable suspicion that criminal activity is afoot when coupled with suspicious circumstances. The Court remarked that "almost" committing a traffic violation is not a suspicious circumstance that can justify a traffic stop. The Court also rejected the State's argument that the community caretaking function justified the search, holding that the community caretaking function was not applicable because there was no evidence that the police were acting to protect the public.

Lamont Anthony Lewis v. State of Maryland, No. 95, September Term 2006, filed April 12, 2007. Opinion by Battaglia, J.

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CRIMINAL LAW – SEARCH AND SEIZURE

Facts: On November 20, 2001, Baltimore County police detectives obtained a search and seizure warrant for 8016 Wynbrook Road, Baltimore County, Maryland, and the persons of Susan Michelle Hubbard and Derek Maurice Williamson. The application for the warrant and attached affidavit stated that police had "received two anonymous narcotics complaints stating that Susan Hubbard and her boyfriend 'Derek' were selling 'crack' cocaine at 8016 Wynbrook Rd. Baltimore, Maryland, 21224;" the affidavit also stated that police had initiated an investigation in which two informants had participated in three separate "controlled purchases of cocaine" from Ms. Hubbard between August and November 2001. During pre-warrant surveillance, police had seen Williamson enter and leave the house numerous times and had been informed that Williamson resided at the house with Hubbard.

The search warrant was executed on November 21, 2001, when Detective Timothy Bryant Ward, several other police detectives, and a uniformed officer arrived at 8016 Wynbrook Road and set up surveillance for twenty to thirty minutes. After the police witnessed Williamson leave the house and approach his vehicle, twenty to thirty feet away, they executed the warrant. Police stopped Williamson before he entered his car and drove away, returned him inside the house, and detained him while the search was conducted. Inside the house, the police read Williamson the search warrant, his *Miranda* rights, and searched his person. The police also asked Williamson whether there were any drugs in the home, to which Williamson responded yes, directing the officers to a coffee can in an upstairs bedroom. The search located three plastic baggies containing cocaine, including the baggie in the coffee can identified by Williamson, three hundred dollars, three straws containing residue, a pen cap containing residue, a clear bag containing a razor with residue, a black digital Tanita scale, and a plastic baggie containing numerous small unused blue plastic baggies. After completing the search, the police escorted Williamson to the North Point Police Station, where further interrogation occurred, admitting that he had been living at the residence for 18 months, that he owned the drugs in the house, and that he weighed and packaged the drugs, while Hubbard sold them.

Williamson was indicted on one count of possession of a controlled dangerous substance, cocaine, in violation of Article 27, Section 287 of the Maryland Code, one count of possession with the intent to distribute a controlled dangerous substance, cocaine, in violation of Article 27, Section 286 of the Maryland Code, and one count of possession of drug paraphernalia in violation of Article 27, Section 287A of the Maryland Code. Prior to trial, Williamson moved to suppress the drugs and paraphernalia recovered during the execution of the search warrant and the statements he made to police at the scene after he was detained and at the police station as fruits of the illegal detention. Judge Alexander R. Wright, Jr. of the Circuit Court for Baltimore County denied Williamson's motion to suppress and determined that the police were entitled to return Williamson to the house and detain him during the search. Williamson subsequently was convicted of possession of a controlled dangerous substance, cocaine, and possession with an intent to distribute a controlled dangerous substance, cocaine, and sentenced to ten years imprisonment without the possibility of parole. The Court of Special Appeals affirmed, and the Court of Appeals granted Williamson's petition for writ of certiorari.

Held: Affirmed. An occupant who just left the house and was

twenty to thirty feet away, can be returned to the house and detained by police during the execution of a search warrant. The Court stated that in *Michigan v. Summers*, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981), the Supreme Court articulated that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." The Court also remarked that the Supreme Court justified the incremental intrusion of an occupant connected with the location to be searched based upon three law enforcement interests: preventing flight, minimizing the risk of harm to officers, and effectuating the orderly completion of the search. The Court noted that the record in this case reflects that the police believed Williamson to be an occupant of the residence at 8016 Wynbrook Road. Further, in response to Williamson's argument that he was outside of the "zone of detention" when he was twenty to thirty feet outside of the house, the Court remarked that the proximity of an occupant to the place searched must be evaluated in the context of whether any of the three law enforcement interests articulated in *Michigan v. Summers* are present when the detention occurs. The Court noted that the police clearly articulated at the suppression hearing that Williamson, a known occupant of the residence, was stopped twenty to thirty feet away from the house out of concern for officer safety, a concern recognized by the Supreme Court in *Summers* as compelling when a search warrant is executed for narcotics, such as in this case.

Derek Maurice Williamson v. State of Maryland, No. 86, September Term 2006, filed April 13, 2007. Opinion by Battaglia, J.

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ELECTIONS - AFFIRMATIVE DEFENSE OF LACHES

Facts: The appellant, Nikos Stanford Liddy ("Liddy"), a registered voter in Maryland, filed a Complaint in the Circuit Court for Anne Arundel County, on October 20, 2006, challenging the candidacy of one of the appellees, Douglas F. Gansler ("Gansler"),

for the office of the Attorney General of Maryland in the November 7, 2006 Gubernatorial General Election. Liddy alleged that Gansler, the victor in the 2006 Gubernatorial Primary Election, thus the Democratic Party's nominee, was not qualified to run for the office of the Attorney General because he had not "practiced Law in this State for at least ten years," as prescribed by Article V, § 4 of the Maryland Constitution. Liddy also brought suit against Linda Lamone ("Lamone"), in her official capacity as the State Administrator of Elections, and the State Board of Elections ("the State Board"), seeking declaratory and injunctive relief against them as well as Gansler.

In response, Gansler filed a Motion to Dismiss, or, in the alternative, for Summary Judgment, contending that he met all eligibility requirements for the office. Lamone and the State Board moved to dismiss and expedite scheduling, contending that Liddy's action was barred by limitations and by laches.

A hearing was held in the Circuit Court for Anne Arundel County. The Circuit Court denied the dispositive motions of all of the appellees, but ultimately ruled in favor of Gansler and his continued candidacy for the office of the Attorney General. Liddy noted an appeal to the Court of Appeals and to the Court of Special Appeals. In addition, he filed, with the Court of Appeals, a Petition for Writ of Certiorari, which that Court granted. The appellees subsequently filed a Joint Cross-Petition for Writ of Certiorari.

Held: *Judgment of the Circuit Court for Anne Arundel County Vacated. Case Remanded to the Circuit Court for Further Proceedings Consistent with the Court of Appeal's Opinion. Costs to be Paid by the Appellant*. An action challenging the constitutional qualifications of a candidate for the office of the Attorney General filed more than three months after a similar action, almost 2 months after the Court of Appeal's Order in that case and just 18 days prior to the general election, is barred by the equitable doctrine of laches.

Nikos Stanford Liddy v. Linda Lamone, et al., No. 71, September Term 2006. Filed March 29, 2007. Opinion by Bell, C.J.

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ELECTIONS - ELIGIBILITY REQUIREMENTS - ATTORNEY GENERAL

Facts: The appellant, Stephen N. Abrams ("Abrams"), a registered voter in Maryland, filed a Complaint in the Circuit Court for Anne Arundel County challenging the candidacy of one of the appellees, Thomas E. Perez ("Perez"), an attorney and law professor, for the office of the Attorney General of Maryland in the 2006 Gubernatorial Primary Election. Abrams alleged that Perez did not meet the "practiced Law in this State for at least ten years" requirement of Article V, § 4 of the Maryland Constitution, which prescribes the qualifications for that office. Abrams also brought suit against two other appellees, Linda H. Lamone ("Lamone"), the State Administrator of Elections, and the State Board of Elections ("the State Board"). More specifically, Abrams sought (1) an order declaring that Perez did not have the qualifications required to hold the office of the Attorney General, (2) an injunction requiring Perez to withdraw his certificate of candidacy, and (3) an injunction prohibiting Lamone and the State Board from placing Perez's name on the ballot.

The appellees responded by filing dispositive motions. Perez filed a Motion to Dismiss and/or Motion for Summary Judgment, principally on the ground that he was qualified to run for, and hold, the office of the Attorney General, while Lamone and the State Board, in the interest of ensuring an orderly administration of the election process, filed a Motion to Dismiss and to Expedite Scheduling. The Circuit Court for Anne Arundel County held a hearing on the motions, at the conclusion of which it issued an oral opinion.

The Circuit Court denied the motion made by Lamone and the State Board and granted Perez's Motion for Summary Judgment, declaring him eligible to run for Attorney General of Maryland. In response to that ruling, Abrams noted an appeal both to the Court of Appeals and the Court of Special Appeals. In addition, Abrams filed a Petition for Writ of Certiorari in the Court of Appeals, which that Court granted.

Held: Reversed. The constitutional requirements, as prescribed by Article V, § 4 of the Maryland Constitution, for the office of the Attorney General of Maryland mandate that a candidate for that office be a member of the Maryland Bar for at least ten years and be a practitioner of law in Maryland for an

identical requisite period. Since Perez was a member of the Maryland Bar for only five years, and practiced, albeit for a period of more than ten years, primarily outside of the State, he was ineligible to run for the office of the Attorney General in the primary election.

Stephen N. Abrams v. Linda H. Lamone, et al., No. 142, September Term 2005. Filed March 26, 2007. Opinion by Bell, C.J.

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EVIDENCE - HEARSAY - BUSINESS RECORDS EXCEPTION

Facts: In this medical malpractice action against the appellee, the University of Maryland Medical Systems Corporation ("UMMS"), the appellant contends that her mother sought treatment at UMMS and waited in the hospital, without treatment, for approximately five hours before the emergency c-section was performed. The appellee, on the other hand, maintains that the appellant's mother arrived at the hospital just prior to her emergency c-section.

The trial court resolved the dispute, when ruling on a motion in limine filed by the appellee, by excluding from the appellant's medical records, created by the hospital, two entries tending to corroborate the appellant's contention that her mother was seen by someone at the hospital at approximately 2:00 a.m., five hours before the operation. Thereafter, in a bifurcated trial, the jury returned a verdict in favor of UMMS on the issue of liability.

The appellant noted this appeal to the Court of Special Appeals, but, prior to that court's consideration of the matter, the Court of Appeals, on its own motion, issued a Writ of Certiorari.

Held: *Judgment of the Circuit Court for Baltimore City Reversed. Case Remanded to that Court for Further Proceedings Consistent with this Opinion. Costs to be Paid by the Appellee.* Entries containing "pathologically germane" statements relevant

to the diagnosis or treatment of a patient's condition, made in a medical record, during the normal course of business, consistent with the standard practices of a hospital, meet the requirements of the business records exception to the hearsay rule, and the exclusion of the entries in this case by the trial judge on the ground that they were hearsay was reversible error.

Tina A. Hall, ex. rel. Teonna Boyce v. The University of Maryland Medical System Corporation, No. 75, September Term 2004. Filed March 21, 2007. Opinion by Bell, C.J.

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PROPERTY TAXES - MONEY JUDGMENTS - REFUNDS - INTEREST

Facts: The respondent leased a piece of property for its business. Under the terms of that lease, the lessor of the personal property was required to pay the taxes due in respect to the property, which respondent then was required to reimburse, as part of its lease payments. During the period of time relevant in the case, the lessor paid the personal property taxes and Saks reimbursed the lessor as required under the lease.

In the years 1998, 1999, and 2000, respondent inadvertently included the same personal property, on which the lessor had already paid taxes, on its own personal property tax returns. That personal property was assessed by the State Department of Assessments and Taxation which issued the respondent additional personal property tax bills. Respondent paid the bills, not realizing that it was paying for the second time, the same taxes for which it had already reimbursed the lessor. The petitioners clearly were paid twice for the same taxes and did not argue otherwise, nor did they dispute that refunds, which they both voluntarily paid, were due to the respondent. The only issue was whether interest was due on the refunds.

When the petitioners did not pay interest to the respondent voluntarily, Saks filed, in the Circuit Court for Harford County, a suit against the petitioners claiming that interest was due. The respondents did not prevail in the Circuit Court, prompting its appeal to the Court of Special Appeals. That court, in an

unreported opinion, reversed the judgment of the Circuit Court. Holding that interest was due to the respondent, it also remanded the case to the Circuit Court for a determination of whether, in addition to regular interest, pre-judgment interest on the refund interest due, was required to be paid by the petitioners. The Court of Appeals granted a writ of certiorari upon the petition of the governmental entities and Saks's conditional cross-petition.

Held: *Judgment of the Court of Special Appeals Affirmed in Part and Reversed in Part. Remanded to That Court With Instructions to Remand to the Circuit Court for Harford County for Further Proceedings Consistent with This Opinion. Costs in This Court, And in the Court of Special Appeals, to Be Paid by Petitioners/Cross-Respondents.* When taxpayer overpaid its personal property taxes, it was entitled to a refund of those monies, as to which both the interest on the refunded taxes and pre-judgment interest on that interest are also payable.

Harford County, et al., v. Saks Fifth Avenue Distribution Company, No. 36, September Term, 2005. Filed April 17, 2007. Opinion by Bell, C.J.

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REAL PROPERTY - EMINENT DOMAIN - NATURE, EXTENT, AND DELEGATION OF POWER - EXERCISE OF DELEGATED POWER - NECESSITY FOR APPROPRIATION - CODE OF PUBLIC LOCAL LAWS OF BALTIMORE CITY, § 21-16, TITLED "QUICK-TAKE CONDEMNATION — IN GENERAL," PROVIDES THE STATUTORY FRAMEWORK FOR QUICK-TAKE ACTIONS IN BALTIMORE CITY. PURSUANT TO § 21-16, IN ORDER TO UTILIZE QUICK-TAKE CONDEMNATION, THE CITY MUST FILE A PETITION UNDER OATH SHOWING THE REASON OR REASONS WHY, BECAUSE OF SOME EXIGENCY OR EMERGENCY, IT IS NECESSARY IN THE PUBLIC INTEREST FOR THE CITY TO HAVE *IMMEDIATE* TITLE TO AND POSSESSION OF A PARTICULAR PROPERTY. § 21-16(A) AND (D). THUS, THE CITY HAS THE BURDEN TO PROVE IMMEDIATE NECESSITY IN ORDER TO PROCEED WITH QUICK-TAKE CONDEMNATION. IN DOING SO, THE CITY MUST SHOW THAT THE NECESSITY IS FOR A PUBLIC USE OR

PURPOSE.

Facts: Arising out of a "quick-take" condemnation action in Baltimore City, this case involves a dispute over properties located at 1701-1709 N. Charles Street (the "Cheapeake Restaurant") and 22-24 E. Lanvale St. (collectively, the "Properties").

On October 25, 1982, the Mayor and City Council of Baltimore, appellee (the "City"), adopted Ordinance No. 82-799, which established the Charles North Urban Renewal Plan for the Charles North Revitalization Area. The Properties are located within the boundaries of the Charles North Revitalization Area and in June 2004, the City specifically authorized the acquisition of the Properties by enacting Ordinance No. 04-695. Ordinance No. 04-695 stated that the Properties were to be acquired "by purchase or condemnation, for urban renewal purposes."

On December 8, 2005, the City filed a petition for condemnation and a petition for immediate possession and title to the Properties in the Circuit Court for Baltimore City. The petition for immediate possession and title to the Properties cited an attached affidavit showing the reasons why it was necessary to "quick-take" the Properties. The affidavit only stated that the Properties "must be in possession of the [City] at the earliest possible time in order to assist in a business expansion in the area."

On December 21, 2005, the Circuit Court granted the City's petitions and sent notice to the owner, Robert A. Sapero, appellant. Mr. Sapero timely filed an answer and, after several postponements, a hearing was set for March 20, 2006. Prior to the hearing, Mr. Sapero attempted to obtain discovery, but was restricted in his efforts because the expedited process of the quick-take condemnation proceedings required that the hearing should have been held before the City would have to comply with discovery.

On March 20, 2006, the hearing was conducted in the Circuit Court. The City called two witnesses: Paul J.M. Dombrowski (the Director of Planning and Design for the Baltimore Development Corporation and also the Project Manager for the Charles North area) and M.J. "Jay" Brodie (the President of the Baltimore Development Corporation). Mr. Dombrowski only testified as to valuation - he provided no testimony as to the existence of any exigency or emergency, or any other reason why the acquisition of the Properties was immediately necessary. Mr. Brodie was next

called to testify. Mr. Sapero made an objection based on his inability to depose Mr. Brodie prior to the hearing, due to the restricted procedural due process of quick-take in terms of discovery. His objection was overruled, but the trial court acquiesced in his request that it be continuing. The only relevant admissible testimony from Mr. Brodie was that the City had "received three proposals." At no point in the questioning did Mr. Brodie testify to the existence of any exigency or emergency or otherwise state why it was necessary for the City to obtain immediate possession of the Properties.

The Circuit Court then granted the City's petitions. On March 30, 2006, Mr. Sapero filed a motion to alter or amend judgment. On May 2, 2006, the Circuit Court denied Mr. Sapero's motion. Thereafter, pursuant to Code of Public Local Laws of Baltimore City, § 21-16(c), Mr. Sapero noted a direct appeal to the Court of Appeals.

Held: Vacated. The Court of Appeals held that the Code of Public Local Laws of Baltimore City, § 21-16, titled "Quick-take condemnation — in general," provides the statutory framework for quick-take actions in Baltimore City. Pursuant to § 21-16, in order to utilize quick-take condemnation, the City must file a petition under oath showing the reason or reasons why it is necessary in the public interest for the City to have *immediate* title to and possession of a particular property. § 21-16(a) and (D). Thus, the City must demonstrate why, because of some exigency or emergency, it is in the public interest for the City to take immediate possession of a particular property. In the case *sub judice*, there was no such showing. Therefore, quick-take condemnation was not the proper method for the City's acquisition of the Properties.

Robert A. Sapero v. Mayor and City Council of Baltimore, No. 72 September Term, 2006, filed April 12, 2007. Opinion by Cathell, J.

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TORTS - NEGLIGENCE

Facts: Appellant complained he was sexually and physically abused and battered by his roommate while he was residing in a group home licensed by the State. He filed the complaint against the State of Maryland and the Baltimore City Department of Social Services (DSS), an agency of the State, as well as against the State-licensed group home and its managers. The complaint alleged that the State owed a duty of care to the appellant to keep him safe from harm while he was housed at the group home, and that this duty was breached when he was not protected from a foreseeable risk of harm associated with being placed in the group home. The State Defendants' breach of duty, he maintained, was the proximate cause of his injuries and damages.

The State filed a motion to dismiss the amended complaint for failure to state a claim. That motion was granted as to the State Defendants, the State of Maryland and DSS, but not as to the other defendants, who were held liable for damages. The appellant appealed the Circuit Court's judgment dismissing the State Defendants from the case. The Court of Appeals, on its own initiative and before proceedings in the Court of Special Appeals, issued a writ of certiorari.

Held: *Judgment of the Circuit Court for Baltimore City Affirmed. Costs to Be Paid by the Appellant.* For a pleading to be sufficient in the context of a negligence action, it must allege "with certainty and definiteness" facts to show a duty on the part of the defendant to the plaintiff. Whether a legal duty exists is a question of law, to be decided by the court. Stating that, upon information and belief, a party knew or should have know about a third party's alleged propensity for violence, without more, is not a sufficient factual allegation from which a duty may arise.

Corey Pendleton v. State of Maryland, No. 31, September Term, 2005. Filed April 13, 2007. Opinion by Bell, C.J.

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WORKERS' COMPENSATION - OCCUPATIONAL DEAFNESS

Facts: Petitioner was employed by the Carr Lowery Glass Company for over thirty years as a mold shop worker. Petitioner filed a claim with the Workers' Compensation Commission (hereinafter "Commission") alleging that years of exposure to loud glass machines had caused loss of hearing. A physician evaluated petitioner's hearing loss and determined that petitioner does have a mild to severe high frequency sensorineural hearing loss. The physician also calculated that petitioner's Maryland Compensation Formula for hearing loss is zero percent. The physician recommended hearing aids. The Commission denied petitioner's claim because it determined that petitioner had not sustained an occupational disease arising out of and in the course of employment. The Commission concluded therefore that the hearing aid issue was moot.

Petitioner filed a petition for judicial review asserting that he was eligible for hearing aids under Md. Code (1999, 2006 Cum. Supp.) § 9-660 of the Labor & Employment Article ("LE") because he suffered a hearing loss within the frequency ranges set forth in LE § 9-505. The Circuit Court for Baltimore City granted summary judgment in favor of the employer/insurer, concluding that the petitioner must meet the standard of LE § 9-650 before he is entitled to medical benefits.

Petitioner filed a timely appeal to the Court of Special Appeals. The intermediate appellate court reviewed the contested provisions and concluded that the language of LE § 9-505 establishes that occupational deafness in certain frequencies due to industrial noise exposure is a compensable condition, but that one who suffers occupational deafness is entitled to compensation and benefits only if he or she also meets the requirements of LE § 9-650. *Green v. Carr*, 170 Md. App. 02, 518-19, 907 A.2d, 845, 854 (2006).

Held: Affirmed. Section 9-505 of the Labor & Employment Article sets forth general requirements for making an occupational deafness claim and does not independently establish employer liability for compensation or medical benefits if a covered employee suffers hearing loss in the identified frequencies. The precise testing procedures for determining the extent of a worker's hearing loss are provided in LE § 9-650, and the Court of Appeals has previously held that an occupational deafness claim constitutes an occupational disease when the hearing loss is sufficient to become compensable under LE § 9-

650. *See Yox v. Tru-Rol*, 380 Md. 326, 328, 844 A.2d 1151, 1152 (2004). The language of LE § 9-660 makes provision of medical benefits contingent, through the use of the word "if," on the employee actually suffering an occupational disease, compensable hernia, or accidental injury. The Court of Appeals concluded that because petitioner concedes that he is not eligible for compensation under LE § 9-650 and therefore concedes that he is not suffering an occupational deafness disease, petitioner is not eligible for medical benefits under LE § 9-660. The Court of Appeals held that a covered employee is entitled to medical benefits under LE § 9-660 for occupational deafness only if the hearing loss is compensable under both LE § 9-505 and LE § 9-550.

Frederick Green v. Carr Lowery Glass Company, Inc., et al., No. 104, September Term, 2006, filed April 13, 2007. Opinion by Raker, J.

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COURT OF SPECIAL APPEALS

CIVIL PROCEDURE - DISCOVER - EXPERT REPORTS - MARYLAND RULE 2-402(F)(1)(A); *TALIAFERRO v. STATE*, 295 MD. 376, 390-91 (1983); APPLYING *TALIAFERRO* FACTORS, *E.G.*, WHETHER DISCLOSURE VIOLATION WAS TECHNICAL OR SUBSTANTIAL, TIMING OF ULTIMATE DISCLOSURE, THE REASON, IF ANY, FOR THE VIOLATION, THE DEGREE OF PREJUDICE TO THE PARTIES RESPECTIVELY OFFERING AND OPPOSING THE EVIDENCE, WHETHER ANY RESULTING PREJUDICE MIGHT BE CURED BY A POSTPONEMENT AND, IF SO, THE OVERALL DESIRABILITY OF A CONTINUANCE, THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION BY GRANTING MOTION *IN LIMINE* TO EXCLUDE REPORT OF APPELLANT'S EXPERT FILED AFTER AUGUST 6, 2005, THE DISCOVERY DEADLINE IN SCHEDULING ORDER FOR DESIGNATION OF APPELLANT'S EXPERT; MD. CODE ANN., COURTS AND JUDICIAL PROCEEDINGS ARTICLE § 5-423, IMMUNITY - DISCLOSURE OF INFORMATION REGARDING EMPLOYEE OR FORMER EMPLOYEE; *WOODRUFF v. TREPEL*, 125 MD. APP. 381, 402 (1999); *MCDERMOTT v. HUGHLEY*, 317 MD. 12 (1989); *ROSENBERG v. HELINSKI*, 328 MD. 664, 677-78 (1992); WHETHER A CONDITIONAL PRIVILEGE EXISTS "IS A QUESTION OF LAW FOR THE JUDGE"; "ONCE ESTABLISHED BY THE TRIAL COURT, "QUALIFIED OR CONDITIONAL PRIVILEGES IN DEFAMATION CASES ARE FORFEITED ONLY UPON A SHOWING OF ACTUAL MALICE, THAT IS, A DEFENDANT WHO MAKES STATEMENTS WITH KNOWLEDGE OF THEIR FALSITY OR WITH RECKLESS DISREGARD FOR THE TRUTH IS NOT PROTECTED"; WHETHER THE CONDITIONAL PRIVILEGE HAS BEEN ABUSED IS A JURY QUESTION "SUBJECT TO THE CENSORIAL POWER OF THE JUDGE WHERE THERE IS NO EVIDENCE OF MALICE, AND THE BURDEN ON THE ISSUE IS ON THE PLAINTIFF; TRIAL JUDGE DID NOT ERR IN CONCLUDING THAT THERE WAS NO EVIDENCE FROM WHICH THE JURY COULD FIND THAT APPELLEES ACTED WITH MALICE OR THAT APPELLEES INTENTIONALLY INTERFERED WITH APPELLANTS' PROSPECTIVE BUSINESS RELATIONS.

Facts: The Federal Bureau of Investigation (FBI) made a conditional offer to appellant that was subsequently revoked after completion of a background check. Appellant filed a six-count complaint against one of his former employers, Smithsburg Emergency Medical Service (SEMS), who failed to recommend him for the position. Appellant demanded and received from the FBI a detailed explanation of their determinations. Appellant's expert report as to lost wages was filed after the discovery deadline and the trial court granted appellees' motion *in limine* to exclude it.

Held: Affirmed. Appellant's reliance on *Food Lion v. McNeill*, 393 Md. 715 (2006) was misplaced because appellant did not submit the expert report in a timely manner. The *Tagliafarro*

factors must be applied in an uncomplicated civil case to determine whether the report submitted after the discovery deadline had passed was admissible. The trial court has broad discretion that will not be disturbed absent abuse thereof and after balancing the factors, the Court held that there was no such abuse. For discovery deadlines to be casually observed obfuscates their function.

The trial court applied the proper standard in deciding that appellants had met their burden of production with evidence, however slight, that the jury, applying a "clear and convincing" standard, could find that appellees forfeited their conditional privilege. The jury decides whether the conditional privilege has been abused after a trial court determines that the conditional privilege exists and that there is evidence in the record for such a jury determination.

The evidence did not establish that appellee was aware of probable falsity or that he reflected serious doubts as to the truth of what he conveyed to the FBI and, thus, could not have had the requisite malice to negate the qualified statutory immunity.

Robert Lowery, Jr. et ux. v. Smithsburg Emergency Medical Service et al., No. 344, September Term, 2006, decided April 5, 2007. Opinion by Davis, J.

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CIVIL PROCEDURE - MOTION FOR NEW TRIAL - MOTION FOR JNOV - MARYLAND RULES 2-535 - COURT'S REVISORY POWER, 2-534 - MOTION TO ALTER OR AMEND, 2-533 - MOTION FOR NEW TRIAL, 2-532 - MOTION FOR JNOV; *WORMWOOD v. BATCHING SYSTEMS, INC.*, 124 MD. APP. 695, 700 (1999); *POLKES & GOLDBERG INS., INC. V. GENERAL INS. CO. OF AMERICA*, 60 MD. APP. 162 (1984); *S. MGMT. CORP. V. TAHA*, 378 MD. 461, 494-95 (2003); ALTHOUGH PRIOR DECISIONS HAVE CHARACTERIZED THE COURT'S DISCRETION TO REVISE A JUDGMENT UNDER RULE 2-535 AS "UNRESTRICTED," THE TERM "BROAD DISCRETION" BEST DESCRIBES THE

NATURE AND SCOPE OF A COURT'S REVISORY POWER, THE TRIAL COURT'S DISCRETION CLEARLY BEING SUBJECT TO APPELLATE REVIEW; THE TRIAL JUDGE, PRESENTED WITH A MOTION FOR JUDGMENT NOTWITHSTANDING THE JURY VERDICT OF $75,000 FOR BREACH OF A BUSINESS AGREEMENT, OR IN THE ALTERNATIVE, A REVISION OF THE JUDGMENT, DENIED APPELLEES' MOTION FOR A PARTIAL NEW TRIAL AS TO DAMAGES, DENIED APPELLEES' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, BUT COMMITTED ERROR IN GRANTING APPELLEES' MOTION TO REVISE THE JURY VERDICT TO $1.00 NOMINAL DAMAGES; COURT'S ACTION INVADED FACT-FINDING PROVINCE OF THE JURY, REQUIRING REVERSAL AND REINSTATEMENT OF JURY VERDICT; MARYLAND RULE 5-702; SUFFICIENCY OF FACTUAL BASIS TO SUPPORT EXPERT TESTIMONY; THE COURT, HAVING PROPERLY EXCLUDED APPELLANTS' EXPERT TESTIMONY REGARDING FUTURE LOST INCOME, THERE WAS AN INSUFFICIENT FACTUAL BASIS TO SUPPORT THE CLAIM.

Facts: Appellants filed a complaint for breach of contract and damages resulting from an association with appellees in a medical practice. At trial, the court excluded appellants' damages expert because appellants failed to notify appellees that the expert would so testify. The trial court reduced the jury-awarded damages of $75,000 to $1 nominal damages because the court had intended that the breach of contract claim go to the jury for possible nominal damages. The court thereafter denied appellants' Motion Notwithstanding the Verdict and Motion for a New Trial as to damages. Appellant appealed both rulings and demanded a new trial as to damages.

The Court engaged in an analysis of the proper bases for the grant or denial of a motion requesting that the court exercise its revisory power, a motion for new trial and a motion for judgment notwithstanding the verdict.

Held: Reversed in part and Affirmed in part. Although the trial judge has virtually unfettered discretion in the decision whether to grant a motion for new trial, Rule 2–533 delineates the outer limits of the court's authority, which is not inconsistent with the more restrictive view of the court's revisory power under Rule 2-535. Substitution of the court's judgment may well result in invading the fact finding province of the jury under Rule 2-535. The grant of a new trial presents no such result.

Because no nominal damages instruction was given, the jury made its determinations based upon the evidence before it. Thus, the trial judge did not remold or reform the verdict, but, instead, reformed the verdict to comport with his own findings which was in error.

The trial court acted within its broad discretion in finding that Kohler's testimony indicated that there were no facts upon which Kohler could form an expert opinion and the discretionary finding that the facts as presented were not so complicated as to require expert testimony. The finding, therefore, was not manifestly erroneous.

Dennis G. Kleban et al. v. Jacqueline S. Eghrari-Sabet et al., No. 1018, September Term, 2006, decided April 6, 2007. Opinion by Davis, J.

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CRIMINAL LAW - HEARKENING AND POLLING OF JURY - JURY DISCHARGED AFTER RENDERING VERDICT - VERDICT NOT HEARKENED - POLL NOT REQUESTED - RECALL AND SWEARING OF JURY AFTER DISCHARGE FOR BELATED POLLING/HEARKENING IS OF NO EFFECT - ONCE JURORS ARE DISCHARGED AND DISPERSED, THEY NO LONGER CONSTITUTE A JURY

Facts: Appellant, Tyshawn Jones, was arrested following a robbery and subsequent shooting at an apartment complex in Washington County. Appellant was subsequently convicted by a jury, in the Circuit Court for Washington County, of first-degree felony murder, depraved heart second-degree murder, conspiracy to commit armed robbery, armed robbery, and numerous other related and lesser-included offenses.

On appeal, appellant challenged his conviction on five grounds including sufficiency of the evidence for armed robbery, conspiracy to commit armed robbery and first-degree felony murder. Appellant also challenged the circuit court's admission of a statement given while in police custody and the court's failure to poll or hearken the jury on the verdict before they were discharged.

Held: Reversed first-degree felony murder conviction and

remanded for new trial on all other counts. The circuit court correctly determined appellant's statement to police to be voluntary and not induced by a prior agreement not to prosecute made with the State's Attorney. Appellant admitted that he breached the agreement after signing it. One who breaches an agreement not to prosecute cannot later enjoy the fruits of the agreement. The State did not establish a causal connection between the robbery of Victim A and the later shooting of Victim B - the events were sufficiently attenuated to preclude an inference that the shooting of Victim B was in furtherance of the robbery of Victim A. Hearkening is required in the absence of a request for a poll of the jury. It matters not which procedure is first called for - the poll or hearkening. If the jury is polled, a failure to hearken will not be fatal. If the verdict is hearkened, a poll need not be conducted absent a request by a party. Absent both, the verdict is defective and a new trial must be ordered. Hearkening of the verdict and/or polling of the jury, if requested by a party, or initiated by the court, in order to comply with Md. Rule 4-327(e), must occur before the jury is discharged and dispersed. Once a jury is dispersed, and beyond the presence of the court, it cannot later be reconstituted.

Jones v. State, No. 540, September Term, 2005, filed March 29, 2006. Opinion by Sharer, J.

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INSURANCE - EXCLUSION OF COVERAGE TO EMPLOYEE OPERATING HIS OWN VEHICLE - EXCLUSION PROVISION IS NOT CONTRARY TO STATED PUBLIC POLICY WHEN MINIMUM COMPULSORY MOTOR VEHICLE INSURANCE LAW IS COMPLIED WITH

Facts: Robert Piazza and Thelma Green, operating separate vehicles, were involved in a collision in Prince George's County. At that time, Piazza was employed by Jani-King International, Inc. and was returning to the company's offices after visiting a client. Piazza was driving his own vehicle. Green filed a lawsuit against Piazza and her insurance company, Kemper, seeking damages

for injuries sustained as a result of the accident. Green did not name Jani-King under an agency or respondeat superior theory. The underlying motor tort claim was settled, calling for Green to be compensated in the amount of $240,000. Of that amount, $100,000 was paid by Piazza's personal auto insurance carrier, Allstate Insurance Company. The balance was paid by Kemper, after Continental declined to defend or indemnify Piazza based upon a policy exclusion. Kemper filed a complaint for declaratory judgment, seeking a declaration that Continental's contract with Jani-King covered Piazza at the time of the collission.

The Circuit Court for Prince George's County ruled that Piazza was an insured under Continental's policy and that the denial of coverage by Continental was invalid and unenforceable under Maryland law. The circuit court ordered Continental to pay $140,000 to Kemper, as well as attorneys' fees incurred by Kemper based upon the wrongful denial of coverage.

Held: Reversed. Insurance contracts are interpreted following general rules of contract construction. Absent a conflict with statutory provisions or public policy, insurers like other individuals are entitled to limit their liability and to impose and to enforce reasonable conditions upon the policy obligations they contractually assume. The question of who is an insured is different from the question of what is covered. The fact that the employee's vehicle is covered has no effect on who is insured. Similarly, the fact that the employee is not an insured has no effect on which vehicles are covered. There was no showing that the policy in question failed to satisfy the minimum standards of Maryland's compulsory insurance laws, or otherwise violated Maryland public policy. Both vehicles involved in Piazza's accident were adequately covered to meet Maryland's minimum standards.

Continental Casualty Company v. Kemper Insurance Company et al, No. 2771, September Term, 2005, filed April 2, 2006. Opinion by Sharer, J.

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LABOR & EMPLOYMENT - TEMPORARY EMPLOYMENT - TURNING DOWN SUITABLE ALTHOUGH TEMPORARY EMPLOYMENT DOES NOT CONSTITUTE "GOOD CAUSE" TO REFUSE EMPLOYMENT

Facts: Sharon A. Long ("Long") worked as a receptionist for Scherer Tax Service, Inc. ("STS"), for the 2004 tax season, from January to April 15, 2004. She earned $11 an hour and worked forty hours per week. After April 15, she was let go by STS due to lack of work. In September of that year, Long began looking for a permanent job, conducting her research and application process exclusively on the Internet. On January 9, 2005, Long began receiving unemployment benefits. Two weeks later, STS contacted Long to offer her the same job as the one she had the year before. The hours remained at forty per week and the pay increased to $12.50 an hour. Long refused the offer because the job was to terminate at the end of the tax season and she preferred to continue looking for a permanent job. She eventually found a job in May 2005.

STS contested Long's unemployment benefits. The Department of Labor, Licensing and Regulation ("DLLR") determined that Long was entitled to her benefits because she had good cause to reject STS's offer and was able, available, and actively seeking work. The Circuit Court for Baltimore City affirmed the agency's decisions. The question presented on appeal was whether a claimant has "good cause" to reject temporary, albeit full-time, employment for the sole reason that the claimant wishes to find permanent employment.

Held: Section 8-1005(a)(2) of the Labor and Employment Article of the Maryland Code states that an otherwise eligible claimant is disqualified from receiving unemployment benefits if the DLLR finds that "the individual, without good cause, failed to accept suitable work when offered."

Under the statute, factors to consider when determining whether work is suitable include: "the degree of risk involved to the health, morals, and safety of the individual"; "experience, previous earnings"; "length of unemployment"; and "distance of available work from the residence of the individual."

The Court held that the position STS offered was for "suitable" work, inasmuch as the position was virtually identical to the job Long had previously and it was for an hourly rate of $1.50 higher than previously.

As to the question of "good cause," the Court noted that Long had been seeking permanent work for over four-and-a-half

months when STS offered her a job. Case law from other jurisdictions indicates that the longer a claimant remains unemployed, the more he or she is expected to accept temporary work.

The Court observed that the term "good cause" is not defined in the statute. Nevertheless, an excellent definition of "good cause" utilized in many instances in states with statutory provisions similar to section 8-1005 is "that which would make an ordinarily reasonable individual follow that procedure in the same or similar circumstances."

The Court held that an ordinarily reasonable person "would not have turned down the offer of seasonal employment made by STS." Long was offered a "suitable job," and she would also have been able to continue her job search before or after her work hours, on the Internet. The Court opined that simply because the position was seasonal was not a sufficiently good reason to reject STS's offer. The judgment affirming the DLLR's award of compensation was reversed.

Scherer Tax Service, Inc. v. Department of Labor, Licensing and Regulation, No. 123, September Term, 2006, filed March 14, 2007. Opinion by Salmon, J.

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ZONING – CRITICAL AREA ACT – VARIANCES

Facts: Appellants owned two adjoining parcels of land in Pasadena, Maryland, located within the Chesapeake Bay Critical Area. Appellants wished to build a two-story ranch style residence and a septic system on the parcels, but because the parcels were entirely within the Chesapeake Bay Critical Area, appellants were required to apply for variances to develop the land.

Appellants sought three variances from the Anne Arundel

County Board of Appeals. Two of the variances were for relief from the Critical Area Act and one was for relief from general zoning requirements. First, appellants requested a variance of 56 feet from the 100-foot buffer zone required by Article 28, § 1A-104(a)(1). Second, appellants requested a variance from Article 28, § 1A-105(d), prohibiting development on slopes of 15% or greater in limited and resource conservation areas, for the temporary disturbance installation of appellants' septic system would cause. Third, appellants requested a 10-foot variance from the 25-foot rear yard setback requirement of Article 28, § 2-405(a)(3).

After a hearing before the County's Administrative Hearing Officer, the Anne Arundel County Board of Appeals conducted a de novo hearing on the requests.

The Board denied the requests stating generally that the appellants had failed to meet their burden of proof. The Circuit Court for Anne Arundel County affirmed the Board's denial of the variances.

Held: Reversed and Remanded. The Court of Special Appeals held first, that changes to the State Chesapeake Bay Critical Area Program and the corresponding county land use code affecting the requirements for obtaining a variance applied to the proceeding on appellant's requests for variances. The Court reasoned that the enacting legislative bodies had provided no express statement to the contrary, the proceeding was pending before the Board of Appeals on the effective dates of the changes, the changes did not regulate conduct or affect events that had occurred prior to the effective dates, and appellants had not acquired any vested rights.

Second, the Court held that a county land use code provision that did not expressly require an applicant to meet all of the criteria for a variance in the State Chesapeake Bay Critical Area Program would be interpreted as requiring compliance with all of the criteria required by the State Program. The State Program mandated that local governments comply with the Program's criteria for granting a variance, those criteria included a provision that an applicant had to meet all of the criteria for a variance, and if the county land use code was not so interpreted, then the county code would conflict with state law.

Third, the Court held that the County Board of Appeals failed to meet the requirement for a reasoned analysis. When a Board of Appeals denies an application for a variance, and the

property owner has a legal right to build on the property, but cannot do so without a variance, it is insufficient for the Board to deny the variance merely on the grounds that the owner had not met its burden of proof; rather the Board must explain and give reasons for its denial of the requested variance.

Becker v. Anne Arundel County, No. 1097, September Term 2006, filed April 9, 2007. Opinion by Eyler, James.

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ZONING - SPECIAL EXCEPTION STANDARD

Facts: Terrapin Run, LLC, appellee, applied to the Board of Appeals of Allegany County for a special exception to develop a planned residential development in an area zoned 'A' [Agriculture, Forestry and Mining] and 'C' [Conservation]. The proposal included condominiums, single family homes, multiple family dwellings, an equestrian center, a community building, and a retail area. The development would have its own water system and waste water treatment plant.

The Board granted the special exception, stating that appellants had not met their burden of demonstrating that the requested special exception use would cause an adverse effect upon the surrounding properties more severe or different in kind from the effect that it would have elsewhere. The Board of Appeals also found that the applicable standard for determining whether to grant special exceptions was whether the exception was "in harmony with" Allegany County's comprehensive plan, as opposed to whether it was "in conformity with" that plan, as argued by appellants.

Appellants appealed to the Circuit Court, arguing that the Board of Appeals used the wrong standard of review and erred in approving both the retail/commercial area and the waste water treatment plant. The circuit court did not address appellants' arguments regarding the retail/commercial area and waste water

treatment plant, but found that the Board of Appeals used the wrong standard of review. It found that the proper standard for determining whether to grant a special exception should be whether the exception is "consistent with" the comprehensive plan and not merely "in harmony" with the plan.

Held: Reversed and Remanded. The Court of Special Appeals held that the Board of Appeals' "in harmony with" standard was acceptable. Maryland Code Art. 66B, which empowers certain local jurisdictions to adopt zoning codes, does not require a special exception use to be in strict compliance with a local comprehensive plan. If a local jurisdiction does not require strict compliance, the plan will merely function as a guide. Here, the local legislative body did not raise Allegany County's comprehensive plan to a strict regulatory device. Finally, approval of the proposed commercial/retail area and waste water treatment plant as an accessory use was within the Board's discretion.

David Trail v. Terrapin Run, LLC, No. 810, September Term, 2006, filed April 6, 2007. Opinion by Eyler, James.

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ATTORNEY DISCIPLINE

By an Order of the Court of Appeals of Maryland dated April 3, 2007, the following attorney has been disbarred by consent, effective immediately, from the further practice of law in this State:

DIMONE G. LONG

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The following attorneys have been replaced upon the register of attorneys in the Court of Appeals of Maryland effective April 11, 2007:

LESTER A.D. ADAMS
NATHAN H. CHRISTOPHER, JR
NATALIE H. REES

*

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland effective April 26, 2007:

JOHN LYSTER HILL

*