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Facts: The Attorney Grievance Commission ("Petitioner"), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action (the "Petition") against Anthony Alex Saridakis ("Respondent") alleging violations of Maryland Rules of Professional Conduct ("MRPC") 1.8(c) and 8.4(d) in connection with his preparation of a will on behalf of an unrelated, long-time client, Wylette Speed, in which will he was named the beneficiary of a substantial bequest. The hearing judge conducted an evidentiary hearing on the Petition and rendered findings of fact and recommended conclusions of law, which stated his determination that Respondent did not commit the ethical violations alleged.

Wylette Speed had entrusted Respondent for a long time (1980-2000) to represent her legal interests. In the course of his representation of Mrs. Speed, Respondent prepared several wills, executed a general power of attorney for her in his favor, and was named her health care agent. Respondent handled all Wylette's financial and real estate matters.

Wylette had no immediate family in close proximity to her home. Her primary social contacts were with the officers of the trust which was created for her by her late husband, her godson, and Respondent. Respondent visited with Wylette on a regular basis throughout his legal representation of her, including visits to Mrs. Speed following a debilitating stroke in 1992 while she was hospitalized and then, after being transferred, while she resided in nursing homes. After several months in the second nursing home, Wylette repeated her request, made once previously while in the first nursing home, that Respondent draft for her a new will that would include Respondent as a beneficiary of her residuary estate. Respondent reviewed the bequests with her and advised her that he did not feel comfortable composing a will in which he was a beneficiary. Wylette, however, was adamant about her wishes, so Respondent told her that she should consult with another attorney

because of his concerns about preparing such a will. Mrs. Speed asked Respondent to locate another attorney in order to carry out her desired disposition.

Respondent prepared the will according to Wylette's instructions and consulted with an experienced estates and trusts attorney, Richard Lawlor, for the purpose of reviewing the will with Wylette and gauging her competence. During all times relevant to the case, Lawlor and Respondent maintained distinct law practices, but shared an office suite, receptionist, and conference room. According to the record, Lawlor agreed to meet with Wylette Speed and, on 13 May 1994, in a private consultation, reviewed all of the items contained in the will and verified Wylette's donative intent as to each item, including the bequest to Respondent. Mrs. Speed executed the will. Wylette Speed died on 6 April 2000 at the age of 88. When the will was discharged from probate, Respondent received a residuary bequest in the amount of $413,281.00.

The hearing judge concluded that Lawlor "acted as independent counsel to Wylette." As principal support for this conclusion, the judge relied on a three-page, typed memorandum, prepared by Lawlor immediately following the meeting, relating to his consultation with Wylette at the nursing home. Lawlor also opened a client file for Wylette, noted the nature of his representation as "estate planning consultation," and prepared a bill for his services. The hearing judge also accepted the opinion of an expert witness in the field of legal ethics that Respondent did not violate Rule 1.8(c) of the MRPC because Lawlor qualified as independent counsel to Mrs. Speed. As a natural incident to that conclusion, he found no violation of MRPC 8.4(d). Petitioner filed exceptions to the hearing judge's conclusions.

Held: Case remanded to commission for it to dismiss petition with warning. Exceptions sustained. The Court disagreed with the hearing judge's conclusion that Lawlor sufficiently was independent in his role of consulting with Wylette Speed as to the residuary bequest to Respondent. The Court relied, in part, on its interpretation of MRPC 1.8(c) expressed in *Attorney Grievance Commission v. Stein*, 373 Md. 531, 819 A.2d 372 (2003). The *Stein* Court said that "[t]he independent counsel required by the Rule must be truly independent - the requirement of the Rule may not be satisfied by consultation with an attorney who is a partner of, *shares space with*, or is a close associate of the attorney-drafter." 373 Md. at 537-38, 819 A.2d at 376 (emphasis added). Under *Stein*, because Lawlor and Respondent shared an office suite, conference room, and receptionist, Lawlor could be perceived reasonably by an objective member of the public as not sufficiently independent of Respondent for the purpose of the Rule.

The Court was unpersuaded by Respondent's argument that its consideration of *Stein*, which was decided nine years after the series of events unfolded that are the factual predicate of the instant disciplinary action, was an unfair retrospective application of law. The provisions of MRPC 1.8(c) interpreted in *Stein* were the same as prevailed at the time of Respondent's conduct. When setting forth and applying the law with regard to the interpretation of a statute or rule in a certain case, the pronouncement of the law offered in that case is viewed generally as what has always been the law, albeit unannounced until that case. *Am. Trucking Ass'ns, Inc. v. Goldstein*, 312 Md. 583, 591, 541 A.2d 955, 958 (1988). Because the interpretation given in *Stein* had been the law, its application to facts arising before the interpretation was articulated is a proper and fair retrospective application of the law. *Contra Goldstein*, 312 Md. at 591, 541 A.2d at 959 (explaining that a retrospective application of the law is improper when there is a clear departure from a well-established precedent); *Warrick v. State*, 108 Md. App. 108, 113, 671 A.2d 51, 53 (1996) (citing *Griffith v. Kentucky*, 479 U.S. 314, 324-25, 107 S. Ct. 708, 714, 93 L. Ed. 2d 649 (1987)) (same).

Despite the fact that Respondent endeavored in apparent good faith to comply with MRPC 1.8(c), Respondent erred by recruiting a friend and office suite co-tenant to fulfill the role as independent counsel to Mrs. Speed. While that choice may have been blessed with the virtues of convenience and competence on the part of Lawlor, it lacked consideration of the nuance of how the perception of closeness between the attorneys might be viewed as undermining the independence requirement of the Rule. Respondent's choice for independent counsel may not have appeared sufficiently independent to a member of the public aware of the connection between Respondent and Lawlor and knowing the other material background facts. Accordingly, the Court believed that Respondent sacrificed adherence to the spirit of MRPC 1.8(c) and created an appearance of impropriety, which is sufficient to constitute a violation of the Rule. *Attorney Grievance Comm'n v. Hines*, 366 Md. 277, 293, 783 A.2d 656, 665 (2001) (quoting *Attorney Grievance Comm'n v. Kent*, 337 Md. 361, 382, 653 A.2d 909, 919 (1995)).

Respondent's actions in violating MRPC 1.8(c) harmed the public's confidence in the judicial system, which necessarily constituted "conduct that is prejudicial to the administration of justice." We have said specifically that violations of MRPC 1.8(c) are detrimental to public confidence in the legal system. *See Attorney Grievance Comm'n v. Lanocha*, 392 Md. 234, 244, 896 A.2d 996, 1002 (2006) (citing *Stein*, 373 Md. at 543, 819 A.2d at 379).

The Court determined, however, that Respondent's misconduct warranted only a warning because his actions were less egregious violations of MRPC 1.8(c) than exhibited in *Stein* and other cases where violations of the same rules occurred, which resulted in suspensions or reprimands for the disciplined attorneys. Moreover, Respondent made a good faith and significant effort to comply with his ethical obligations.

Attorney Grievance Commission of Maryland v. Anthony A. Saridakis, Misc. Docket AG No. 25, Sept. Term 2006. Filed December 7, 2007. Opinion by Harrell, J.

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CIVIL PROCEDURE - ACTIONS FOR DECLARATORY JUDGMENT - REQUIREMENTS - WRITTEN ORDER DECLARING RIGHTS OF PARTIES

MUNICIPAL EMPLOYEES AND PENSIONS - SECTION 3.36.150A1 OF THE CITY CODE OF THE CITY OF ANNAPOLIS - STATUTORY INTERPRETATION - PLAIN LANGUAGE

Facts: Fifty-nine retired police officers and firefighters for the City of Annapolis challenged the City's interpretation of Section 3.36.150A1 of the City Code which would deny them increased pension benefits in tandem with raises given to their active duty counterparts. The retirees had first filed individual claims with the City's Director of Human Resources requesting the pension increases after the City twice modified the pay scale for active duty city employees. The Director denied the retirees' individual claims. The retirees then collectively appealed to the City's Civil Service Board. Initially, the Board declined to consider all but one claim because it found the collective appeal to be improper under Rule 23 of the Federal Rules of Civil Procedure. The Board then denied the only claim pending before it, Mr. Bowen's, on its merits. Dissatisfied, the retirees filed a complaint for declaratory and injunctive relief and judgment in the Circuit Court for Anne Arundel County. The Circuit Court reversed the Board's decision, remanding the case for further proceedings. The City

appealed to the Court of Special Appeals. The intermediate appellate court reversed the Circuit Court, holding that the so-called "equalization provision" contained in Section 3.36.150A1 applied only to cost-of-living adjustments made in the active duty employees' pay scale. On June 13, 2007, the Court of Appeals granted the City's petition for a writ of certiorari.

Held: Affirmed in part and reversed in part. Remanded to the Court of Special Appeals with directions to remand the case to the Circuit Court to enter an appropriate declaratory judgment.

The Court of Appeals first determined whether the Court of Special Appeals erred in denying the retirees' motion to dismiss the City's appeal. The retirees argued in its motion before the intermediate appellate court that the court did not have jurisdiction to hear the appeal because an aggrieved party, under Maryland Code (1974, 2006 Repl. Vol.), § 12-302 of the Court and Judicial Proceedings Article, cannot seek appellate review of a circuit court's decision when that decision was made in the exercise of the circuit court's appellate jurisdiction. The Court of Appeals, while disagreeing with the analysis utilized by the intermediate appellate court, held that the Court of Special Appeals did not err in denying the retiree's motion to dismiss. The Court of Appeals determined that the Court of Special Appeals' labeling of the retirees' complaint as a common law writ of mandamus ignored the clear language of the complaint. Instead, the Court read the retirees' complaint to contain a clear and explicit request for both declaratory and injunctive relief. The Court of Appeals concluded, however, that the difference in the labeling of the subject matter of the complaint would not result in a change in the outcome of the appeal as, like common law writs of mandamus, actions for declaratory and injunctive relief filed in the Circuit Court are reviewable on appeal.

The Court of Appeals next commented on the Circuit Court's failure to enter a written declaration of the rights of the parties. The Court noted that Maryland law requires circuit courts, in every action for declaratory judgement, to enter a written declaration stating the rights and obligations of the parties involved in the case. The Court held that the Circuit Court's failure to declare the parties' rights was neither a jurisdictional error nor fatal to the Court's reaching the merits of the appeal. Rather, the Court ordered the Circuit Court, on remand, to enter an appropriate declaratory judgment order consistent with the opinion.

The Court of Appeals then moved to the merits of the appeal, holding that the Court of Special Appeals and the Board erred, as

a matter of law, by ruling that the retirees were not entitled to pension increases in tandem with salary increases given to active employees of the same rank and years of service. The Court read the plain language of Section 3.36.150A1 to be clear and unambiguous, supporting the retirees' position. The Court stated: "The phrase 'any increase in pay scale for members of the same rank and years of service who are on active duty' means just what it says - retired police officers and firefighters are entitled to receive increases in their pensions in tandem to any increases in salaries that active [duty] police officers and firefighters of the same rank and same number of years of service [as the retired employee at his or her retirement] receive from the City." The Court noted that the City Council's perceived purpose of Section 3.36.150A1 (e.g., for explicit cost-of-living adjustments only) played no role in the Court's reading of the Section 3.36.150A1 because its language was clear and unambiguous. The Court also rejected the City's argument that the retirees could not receive certain pay increases because the City Code requires employees to first receive a satisfactory review from a supervisor. The Court stated: "While the active employees' step increases are subject to a satisfactory rating from a supervisor, the plain language of Section 3.36.150A1 operates without any limitation, permitting a retired employee to receive the same percentage of an increase as an active employee of the same rank and years of service received on his or her anniversary date due to a satisfactory review." Therefore, the Court concluded that the City was obligated, under Section 3.36.150A, to increase eligible retired police officers' and firefighters' pension benefits by the same percentage of any increase(s) received by active employees of the same rank and years of service.

Last, the Court of Appeals held that the Board's refusal to consider all of the appeals at the time of the hearing was unreasonable. The Court noted that the Board's reliance of Federal Rule of Civil Procedure 23 was erroneous because the Federal Rules of Civil Procedure govern only the procedure of civil suits in United States district courts and bind neither state courts nor state or local administrative agencies. Furthermore, the Court noted that the stated procedure and rules governing matters before the Civil Service Board - codified primarily at Section 3.16.150 and 3.36.150 - do not prohibit the collective appeal of a common issue of law or fact.

Edgar A. Bowen, Jr., et al. v. City of Annapolis, No. 34, September Term 2007, filed December 14, 2007. Opinion by Greene, J.

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COMMERCIAL LAW – STATUTE OF LIMITATIONS – THE THREE YEAR STATUTE OF LIMITATIONS APPLIES TO CLAIMS FOR UNFAIR AND DECEPTIVE TRADE PRACTICES.

COMMERCIAL LAW - STATUTE OF LIMITATIONS - THE CONTINUATION OF EVENTS THEORY DOES NOT TOLL THE STATUTE OF LIMITATIONS WHERE THERE IS NO FIDUCIARY RELATIONSHIP BETWEEN THE PARTIES.

COMMERCIAL LAW - STATUTE OF LIMITATIONS - WHERE THE PLAINTIFF KNEW OR SHOULD HAVE KNOWN OF HER CLAIM, THE CONTINUING HARM RULE WILL NOT TOLL THE STATUTE OF LIMITATIONS MERELY BECAUSE THE HARM IS ONGOING.

Facts: On October 28, 1998, Linda MacBride entered into a lease agreement to lease an apartment from Michael Pishvaian. While the premises looked "nice and clean," Ms. MacBride noticed water spots and a suspicious odor. Subsequently, during heavy rains, water soaked the ceilings and carpets, eventually causing a mold problem. Ms. MacBride complained but management did not correct the problems to her satisfaction. She moved out in November 2004.

On December 10, 2004, after an inspector discovered mold, a squirrel's nest, and other items in need of repair at the apartment, Ms. MacBride filed a complaint in the Circuit Court for Frederick County, alleging, among other claims, unfair and deceptive trade practices. After a three-day trial, the jury found Mr. Pishvaian had engaged in unfair and deceptive trade practices. The jury also found that Ms. MacBride should have known of these practices on October 28, 1998. The Circuit Court entered a JNOV on the grounds of limitations, noting that the continuation of events did not toll the statute of limitations.

Ms. MacBride noted an appeal to the Court of Special Appeals on November 15, 2006. The Court of Appeals issued a writ of certiorari on its own initiative. *MacBride v. Pishvaian*, 400 Md. 646, 929 A.2d 889 (2007).

Held: Affirmed. On appeal, Ms. MacBride argued the jury verdict in her favor was a decision by the jury that limitations did not bar her claim. She also maintained that even though she knew or should have known about the unfair and deceptive trade practices in 1998, the statute of limitations tolled because of the "continuation of events" or "continuing harm" rule.

The Court of Appeals held that the date on which Ms. MacBride knew or should have known of the unfair and deceptive trade practices was a factual question properly reserved for the jury.

The "continuation of events" theory did not toll the limitations, because there was no fiduciary relationship. Nor did the "continuing harm" theory toll the limitations because Ms. MacBride knew or should have known of her claim at the inception of the lease. Therefore, the Circuit Court correctly entered a JNOV in favor of Mr. Pishvaian.

MacBride v. Pishvaian, No. 42, September Term, 2007. Opinion filed on December 13, 2007 by Greene, J.

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EDUCATION - WRONGFUL TERMINATION - SOVEREIGN IMMUNITY – THE UNIVERSITY OF MARYLAND, COLLEGE PARK – WAIVER

Facts: Petitioner Charles Magnetti, a state employee, filed a wrongful termination action against the University of Maryland, College Park, the College of Arts and Humanities, and Dr. Michael Marcuse - Director of the Professional Writing Program, a program within the College of Arts and Humanities (collectively, "the University") on June 13, 2005. Magnetti alleged in his complaint that in June 2002, Dr. Marcuse, without articulating a basis for the decision, informed him that his teaching contract with the Professional Writing Program would not be renewed for the Fall 2002 semester. The Circuit Court, on motion by the University, dismissed Magnetti's complaint as barred by the doctrine of sovereign immunity. The Circuit Court explained that Magnetti had failed to file his complaint within one year of the accrual date of his claim, as required by Maryland Code (1984, 2004 Repl. Vol.), § 12-202 of the State Government Article ("S.G."), and was therefore unable to effectuate the necessary waiver of the University's sovereign immunity. Dissatisfied, Magnetti filed an appeal with the Court of Special Appeals, which affirmed the Circuit Court's dismissal of Magnetti's complaint. This Court granted Magnetti's petition for writ of certiorari on April 11, 2007.

Held: Affirmed. The Court of Appeals held that sovereign immunity prevented Magnetti from maintaining his action against the

University. Magnetti failed to effectuate the necessary waiver of the University's sovereign immunity when he failed to file his claim within one year of its accrual date, as required by S.G. §§ 12-201 and 12-202. The Court of Appeals further held that the language of Section 12-104 (a) of the Education Article limiting restrictions placed upon the authority of the Board of Regents to those specifically referencing the University System of Maryland did not affect the applicability of the condition precedent in S.G. § 12-202 to the instant case. The Court concluded that the condition precedent was not a restriction placed upon the functions or duties of the Board of Regents; rather, it is a requirement placed upon the claimant. Last, the Court of Appeals rejected Magnetti's argument that Section 12-104 (b) of the Education Article wholly waived the University's sovereign immunity. The Court stated: "So long as an action against the State and/or its covered officers or units, including the University, falls within the applicability of S.G. § 12-201, the claimant must fulfill the condition precedent set forth in S.G. § 12-202 in order to effectuate the wavier of sovereign immunity. This is true regardless of the express statutory waiver relied on by the claimant . . . . A claimant may not choose to disregard the requirements for a waiver of sovereign immunity under S.G. §§ 12-201 and 12-202 in favor of another statutory waiver of sovereign immunity, if S.G. §§ 12-201 is applicable to his or her claim."

Charles Magnetti v. University of Maryland, College Park, et al., No. 8, September Term 2007, filed December 13, 2007. Opinion by Greene, J.

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INSURANCE – NOTICE - NOTICE OF CANCELLATION MAILED TO THE MAILING ADDRESS LISTED IN THE DECLARATIONS PAGE OF THE INSURANCE CONTRACT IS PROPER NOTICE UNDER §27-601 OF THE INSURANCE ARTICLE.

INSURANCE - NOTICE - NOTICE OF CANCELLATION MAILED TO THE INSURED'S AGENT IS PROPER NOTICE UNDER §27-601 OF THE INSURANCE ARTICLE.

Facts: As a result of Anderson's failure to comply with the audit provision of his insurance policy, his insurer, Southern Guaranty, sent a notice of cancellation. The notice of cancellation was mailed to Anderson, addressed "care of" Ben Brown Insurance Agency, at the mailing address listed on the declarations page of the policy. Anderson had used the Ben Brown Insurance Agency for 26 years, to obtain Anderson's insurance policies and receive notices on his behalf.

Anderson complained to the Maryland Insurance Administration, arguing that he never received proper notice. The Maryland Insurance Administration determined that the notice of cancellation Southern Guaranty sent constituted proper notice. The Circuit Court affirmed the agency decision on petition for judicial review, as did the Court of Special Appeals on appeal. Anderson filed a petition for writ of certiorari, which the Court of Appeals granted.

Held: Affirmed. When notice of cancellation for an insurance policy is sent to the insured, "care of" a third party, at the address listed as the mailing address in the declarations pages, it constitutes proper notice under the statutory notice requirements for cancellation of a policy.

The Court held that an insurance policy is a contract and is to be interpreted under the principles of contract law. The use of a third party's name and address in the declarations page of the insurance contract under the heading "Mailing Address" indicates the parties' mutual intent to use that address as Anderson's mailing address. Because Southern Guaranty mailed the notice of cancellation to the "Mailing Address" designated in the insurance policy, they fulfilled their obligation under the statute. Further, Anderson had used the Ben Brown Insurance Agency for 26 years to obtain Anderson's insurance policies and forward them if necessary. These facts and reasonable inferences drawn therefrom, indicate Anderson's consent to appoint a third party as his agent for his insurance needs, including receiving notices on his behalf. Anderson is thus charged with knowledge of the cancellation.

Mark Anderson et al., v. General Casualty Insurance Co. f/k/a Southern Guaranty Insurance Co., No. 25, September Term, 2007. Opinion filed on November 14, 2007 by Greene, J.

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REAL PROPERTY - PROPERTY LAW - RIPARIAN RIGHTS - WHERE A RECORDED PLAT SPECIFICALLY RESERVES THE RIPARIAN RIGHTS TO A DEVELOPER, WHEN THAT DEVELOPER LATER CONVEYS WATERFRONT PROPERTY RECORDED ON THAT SAME PLAT, IT IS PRESUMED THAT RIPARIAN RIGHTS APPURTENANT TO THAT WATERFRONT PROPERTY ARE ALSO CONVEYED.

Facts: In 1931, the Severna Company subdivided a tract of land that it owned, and recorded the Plat in the Land Records of Anne Arundel County. On the Plat was a handwritten note that included a sentence that stated that all riparian rights were retained by the Severna Company. In 1963, the Severna Company conveyed in fee simple a particular tract of waterfront land, which had been recorded on the 1931 Plat, to Christian Rossee. In that conveyance it did not reserve any riparian rights to itself. In 1972, Mr. Rossee conveyed .70 acres of the property he had received from the Severna Company, which became the waterfront land at issue in the instant case, to Mr. and Mrs. Jones. The Joneses conveyed that land, in turn, to Mr. Gunby, respondent. In November 2003, Mr. Gunby filed an application with the Maryland Department of the Environment to build a walkway over a tidal pond that bisected his property, and a 200 foot pier. The Olde Severna Park Improvement Association then claimed that riparian rights had never been granted to Mr. Gunby. Instead, it claimed that the 1931 Plat retained the riparian rights in the Severna Company, and the Severna Company had in turn transferred all of its property rights to the Olde Severna Park Improvement Association, via a quit claim deed in 1977. Additionally, in 1991, the Severna Company conveyed, again via quitclaim deed, any property interests it may have had that were not previously conveyed. Therefore, the Olde Severna Park Improvement Association claimed that the riparian rights to that waterfront property were owned by it, and consequently, Mr. Gunby could not build the walkway and pier.

Held: Affirmed. The Court of Appeals held that the reservation in the 1931 Plat served merely as a notice to Anne Arundel County that no dedication of the riparian rights was intended. Therefore, when the waterfront property was conveyed to Mr. Rossee, prior to any conveyance to the Olde Severna Park Improvement Association, the Severna Company conveyed exactly what it then possessed, i.e., the land and the riparian rights incident to it.

Olde Severna Park Improvement Association, Inc., et al. v. Paul Gunby, No. 37, September Term, 2007, filed December 3, 2007. Opinion by Cathell, J.

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REAL PROPERTY – UNJUST ENRICHMENT – GENERALLY A PLAINTIFF IS NOT A VOLUNTEER AND THUS NOT PROHIBITED FROM RECOVERY IN UNJUST ENRICHMENT WHEN HE OR SHE ACTS UNDER A LEGAL DUTY, ACTS TO PROTECT HIS OR HER PROPERTY INTERESTS, ACTS UNDER A MORAL DUTY, ACTS AT THE REQUEST OF THE DEFENDANT, OR ACTS PURSUANT TO A REASONABLE OR JUSTIFIABLE MISTAKE AS TO THE AFOREMENTIONED CATEGORIES.

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SUMMARY JUDGMENT – AFFIDAVITS IN SUPPORT – AN AFFIDAVIT CONTAINING A MERE ALLUSION TO A DOCUMENT, WITHOUT ATTACHING THAT DOCUMENT OR RECITING ITS RELEVANT TERMS, IS INSUFFICIENT AS LEGAL SUPPORT TO WARRANT THE GRANT OF SUMMARY JUDGMENT.

Facts: Mary Sasso acquired the improved residential property at 533 S. Chester Street in the City of Baltimore (the "Property") on 28 March 1991. Approximately six months later, she conveyed the Property to her daughter, Kathleen Hill, reserving for herself, however, a life estate with the power to encumber the Property. In 1999, Sasso obtained a home equity loan from Provident Bank ("Provident") using the Property as security for the loan. Provident recorded among the land records of Baltimore City on 22 April 1999 the Deed of Trust associated with that loan. Sasso refinanced the loan with Provident, and a new Deed of Trust was executed, on 25 October 2002. Provident issued a certificate of satisfaction for the 1999 loan and properly recorded the new Deed of Trust.

Sasso died on 18 May 2003. Provident continued to receive from Hill regular payments on the 2002 loan through 25 June 2004. In June 2004, Adedayo Mseka (the "Buyer") agreed with Hill to purchase the Property for $175,000. Cross Country Settlements, LLC ("Cross Country"), was engaged by the Buyer to conduct the closing. During its title search, Cross Country discovered the outstanding 2002 Deed of Trust in favor of Provident. Cross Country contacted Provident to obtain payoff information but was unable to obtain payoff information from Provident.

Cross Country asked for further information from Hill about the 2002 Deed of Trust loan. Hill gave Cross Country what she thought was the correct account number at Provident, number 96021899. This account number, as it turns out, was for the original 1999 loan on the Property, not the 2002 loan.

Cross Country, using the account number provided by Hill, contacted Provident again in an effort to obtain payoff information for the 2002 loan. Provident responded on 6 July 2004 with a letter stating that "the above referenced loan was paid in full on October 30, 2002. Deed and Certificate of Satisfaction sent to customer on January 24, 2003." Cross Country renewed its request to Provident for payoff information for the 2002 loan. Provident responded by faxing a copy of the 6 July 2004 letter to Cross Country, with a cover sheet that said, "[t]his was faxed to you on 7-6-04. PS Loan has been pd in full."

The Hill-Mseka closing on the Property occurred on 15 July 2004. At settlement, it was claimed by Cross Country, Hill inquired about a Provident account being paid off. Cross Country showed Hill the 6 July 2004 payoff letter from Provident and inquired as to whether there were outstanding mortgages on the Property. Hill responded that the Provident account she had in mind when earlier she supplied the number 96021899 was a credit card account in her mother's name. Cross Country also claims that Hill informed it that the payoff letter from Provident was accurate. The form "Owner's Affidavit" signed by Hill at closing states, "THAT no agreement or contract for conveyance, or deed, conveyance, written lease, or writing whatsoever, is in existence, adversely affecting the title to said premises, except that in connection with which this Affidavit is given." The settlement proceeded, with Hill receiving the proceeds of the sale of the Property without deduction for any amount due on the 2002 Provident loan. Cross Country, as agent for Stewart Title Guaranty Company ("Stewart"), issued a title insurance policy to the Buyer.

On 16 September 2004, two months after the closing and the last payment on the 2002 loan, Provident faxed Cross Country a

payoff sheet for the outstanding loan, account number 96038807. The amount of the payoff was $70,261.26. On 21 September 2004, Cross Country sent a letter to Hill demanding that Hill "forward to Cross Country Settlements, LLC a certified check [for $70,261.26] made payable to Provident Bank . . . ." Hill did not respond to the demand letter. On 22 December 2004, Provident informed the Buyer that the Property would be sold at foreclosure in early 2005. Provident initiated foreclosure proceedings in the Circuit Court for Baltimore City. The Buyer made a claim against her title insurer, Stewart. Stewart paid the $70,261.26 to Provident, without apparent protest or mounting a defense to the foreclosure on behalf of the Buyer, its insured. No copy of the policy was placed in the record of the present case.

Stewart then made demand upon its issuing agent, Cross Country, for reimbursement of the funds paid to Provident. Cross Country paid Stewart on 18 February 2005. Cross Country claimed it was required to reimburse Stewart by the terms of an underwriting agreement between them, although that agreement also was not made part of the record. The sole basis in the record in support of Cross Country's claim that it was obligated by contract to reimburse Stewart is a bare assertion to that effect in the affidavit of Cross Country's officer.

Cross Country filed its first Complaint against Hill on 12 November 2004 in the Circuit Court for Baltimore County. After a series of dismissals and amended complaints, the Fourth Amended Complaint (the final complaint) and Cross Country's motion for partial summary judgment were filed on 8 March 2005, after Cross Country paid Stewart.

The Fourth Amended Complaint contained five counts: intentional misrepresentation, intentional misrepresentation - concealment, negligent misrepresentation, unjust enrichment, and monies had and received. The misrepresentation counts were dismissed by the Circuit Court on Hill's motion on 5 October 2005. Upon the parties' cross-motions for summary judgment, the Circuit Court granted summary judgment to Cross Country on Count IV, unjust enrichment, on 2 December 2005. Hill filed a timely appeal to the Court of Special Appeals. The intermediate appellate court, in a reported opinion, affirmed the judgment of the trial court. *Hill v. Cross Country Settlements, LLC*, 172 Md. App. 350, 914 A.2d 231 (2007). The Court of Appeals granted certiorari, on Hill's petition, to consider whether the trial court was correct in granting summary judgment to Cross Country.

Held: Reversed and remanded. Unjust enrichment consists of three elements: (1) a benefit conferred upon the defendant by the

plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value. As to the first element, although the consummation of the real estate closing did not constitute a conveyance of a benefit to Hill by Cross Country for the purposes of analysis of an unjust enrichment claim, the events alleged to have occurred subsequent to the closing may support a conclusion that a benefit was conferred. As a matter of law, the payment of the debt of another constitutes a benefit conferred, and thus may satisfy the first element of an unjust enrichment claim. The second element is met by Hill's retention of the benefit. As to the third element, a plaintiff may recover for a payment or payments to a third party as long as the plaintiff was not officious in making such payment or payments. Although the Court declined to supply an exhaustive list of situations where a plaintiff would not be deemed officious, the Court noted that generally a plaintiff is not officious when he or she acts under a legal compulsion or duty, acts under a legally cognizable moral duty, acts to protect his or her own property interests, acts at the request of the defendant, or acts pursuant to a reasonable or justifiable mistake as to any of the aforementioned categories. Hill's remaining argument that this action should have been brought in subrogation and not unjust enrichment is without merit because subrogation, in its relationship to unjust enrichment, is best thought of as a remedy, not as an independent cause of action.

Cross Country's asserted entitlement to summary judgment, that they were not officious in making payment, rests on an unsupported legal conclusion regarding the interpretation and/or legal effect of the absent underwriting agreement with Stewart. Therefore, summary judgment must be reversed for that reason alone.

Kathleen Hill v. Cross Country Settlements, LLC, No. 4, September Term 2007, filed 3 December 2007, Opinion by Harrell, J.

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WORKERS' COMPENSATION - MODIFICATION OF AWARD - DATE OF LAST COMPENSATION PAYMENT

Facts: This case presents the question of whether the date of the last workers' compensation payment, if made by check, is the date when the check is mailed or the date when it is received by the claimant or the claimant's lawful representative.

Petitioner Stachowski filed an application to modify his previous workers' compensation award with the Maryland Workers' Compensation Commission. The Commission denied the application to modify as time-barred by the limitations of Maryland Code (1991, 1999 Repl. Vol., 2006 Cum. Supp), § 9-736(b) of the Labor & Employment Article, which states that the Commission has the power to modify an award where an application is filed within five years of the last compensation payment. Stachowski's employer, Sysco, had mailed the last compensation payment five years and one day before Stachowski filed his petition to modify the award, and five years exactly from the date Stachowski received the payment.

Stachowski appealed to the Circuit Court for Howard County. The Circuit Court granted summary judgment in favor of Sysco, and the Court of Special Appeals affirmed the Circuit Court in an unreported opinion. Stachowski appealed to the Court of Appeals and argued that the date payment is received is the date that should control the running of the limitations provision.

Held: The Court of Appeals held that the limitations period for modification of a prior workers' compensation award begins to run on the date the last compensation payment is received by the claimant or claimant's lawful representative. The phrase "last compensation payment" refers to the date payment is received, not mailed, for purposes of the limitations provision of Maryland Code, § 9-736(b) of the Labor and Employment Article.

This finding comports with the common understanding of the term payment and principles of commercial law, where a check is considered a conditional payment when it is received. The majority of other states who have considered the issue have interpreted the date of payment similarly. Basing payment on the date it is received also serves to read the limitations clause in harmony with the other provisions of the Workers' Compensation Act, principally those which govern the accruing of penalties for late payments based on when an employer "begins to pay."

The Court of Appeals further reasoned that no deference was due the Workers Compensation Commission's interpretation. There

was no evidence indicating that the interpretation was the result of formal rulemaking or a reasoned process of elaboration, had been applied consistently in administrative practice, or was a publicly established and clearly articulated promulgated rule of consistent or long-standing construction.

Michael D. Stachowski v. Sysco Food Services, Inc., et al., No. 18, September Term, 2007, filed December 11, 2007. Opinion by Raker, J.

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COURT OF SPECIAL APPEALS

CONTRACTS - CONTRACT DAMAGES - *AD DAMNUM* CLAUSE - COLLATERAL LOST PROFITS - DEFAULT JUDGMENT.

Facts: In May of 2004, Hewitt Avenue Associates, LLC ("HAA") entered into a contract to purchase two contiguous parcels of raw land (the "Property") from Minh-Vu Hoang and her associates. The multiple listing for the property advertised it as suitable for the building of 15 town houses. HAA purchased the property to develop it into a town house community. Closing was set for 60 days after the contract was signed. During this executory interval, HAA discovered via a title report that all record owners of the property had not signed the sales contract. Hoang and the other sellers failed to resolve these title issues by the closing date despite numerous communications from HAA. Subsequently, HAA sued Hoang and the other sellers in the Circuit Court for Montgomery County, for specific performance and breach of contract. In the *ad* damnum clause of its breach of contract count, HAA sought damages "in excess of $100,000."

Orders of default were entered against Hoang and the other sellers when they did not file timely answers or responsive pleadings to HAA's complaint. Hoang moved, unsuccessfully, to vacate the default order against her. The circuit court then held an evidentiary proceeding which Hoang attended with counsel. At the hearing, HAA elected to pursue damages instead of specific performance. It proceeded to present evidence of the profits it would have realized from developing the town house community, but for the breach by Hoang and the other sellers. This evidence consisted of HAA's 25-year track record of success in building residential communities, plans prepared in anticipation of starting construction on the Property and marketing the new town houses, and expert testimony as to HAA's likely costs and revenue from the completed project. The circuit court ruled in HAA's favor and awarded it $1,889,755.98 in damages.

Held: Judgment for $1,889,775.98 against Hoang modified to $100,000; judgment otherwise affirmed. Maryland law does not prohibit the recovery of collateral lost profits for breach of contract to convey real property. Recovery may be had upon strict proof that the damages were proximately caused by the breach, that they were foreseeable, and that they were reasonably certain. Evidence that HAA, a developer with a 25-year track record of building residential communities, would have built and resold town houses on the property Hoang and associates had agreed to sell and

that Hoang and associates had marketed for the purpose of building a town house community, was legally sufficient to allow recovery for collateral lost profits for breach of the contract to sell the land.

The trial court erred, however, in ruling that, in a default relief hearing, HAA could recover $1.8 million dollars in damages for lost profits when the *ad damnum* clause to HAA's complaint sought damages "in excess of $100,000." Rule 2-305 requires that a complaint for a money judgment "shall include the amount sought." A sum "in excess of" a stated amount is not an amount sought within the meaning of that rule. The trial court's error was prejudicial. The proper disposition on appeal is to vacate the amount of the judgment above $100,000.

Minh-Vu Hoang v. Hewitt Avenue Associates, LLC, No. 1048, September Term 2005, filed December 7, 2007. Opinion by Eyler, Deborah S., J.

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HEALTH - PRESCRIPTIONS - Appellant raised two issues on appeal: 1) Whether the circuit court erred in granting Lilly's motion for summary judgment; 2) Whether the circuit court erred in determining that federal law preempted state law failure to warn claims involving prescription drugs.

Facts: Ellen Crews was a type 1 diabetic. On the morning of February 25, 2002, Crews took a combination therapy of two types of insulin, Humulin N and Humalog, both manufactured and distributed by Eli Lilly. Just before 11:00 a.m., as Crews was driving on the Capital Beltway, she experienced hypoglycemia, and her car, which witnesses described as moving erratically, struck the rear of a vehicle driven by Isaac Gourdine. As a result of the accident, Gourdine's car collided with a tractor-trailer rig parked illegally on the shoulder of the Beltway. Gourdine suffered a fatal head injury.

Appellants filed a complaint for wrongful death and a survival action against Crews, Eli Lilly, the driver of the tractor trailer, the owner of the truck tractor, and the owner of the trailer. Against Eli Lilly, appellants alleged 1) strict liability in tort for sale of misbranded drug with false and misleading advertising and labeling; 2) negligent failure to warn of dangers associated with use of the drug Humalog as directed; 3) conscious misrepresentation and fraud; 4) wrongful death; 5) damages...resulting from the survival act; and 6) punitive damages.

The circuit court on June 12, 2006, granted Eli Lilly's motion for summary judgment. Summary judgment was granted on two grounds: 1) Lilly owed no duty to Gourdine; and 2) the doctrine of federal preemption.

Held: Affirmed. Maryland law recognizes the "learned intermediary doctrine," which holds that the manufacturer of prescription drugs has no duty to directly warn patients of harmful side effects. *Ames v. Apothecon* Inc., 431 F.Supp.2d 566, 572 (D.Md. 2006). Since there is no duty to directly warn users of the drugs of possible adverse effects, it follows that the manufacturer has no duty to warn a nonuser such as Gourdine.. *See Kirk v. Michael Reese Hosp. & Med. Ctr.*, 513 N.E.2d 387, 393 (Ill. 1987) (applying the learned intermediary doctrine and holding that drug manufacturers owed no duty to warn a third party who was injured by a patient using their products).

Even assuming, *arguendo*, that the warnings about the drugs were defective, the injuries sustained by Gourdine were not reasonably foreseeable. It cannot be said that Lilly should have reasonably foreseen that Crews, with her history of hypoglycemia, would ignore her doctor's orders to discontinue her morning insulin, drive a car, suffer a hypoglycemic episode, lose control of her car, strike Gourdine's car, push it into the back of an illegally parked tractor-trailer, and fatally injured Gourdine.

Gourdine, et al v. Crews, et al, No. 1190, September Term 20026, filed November 29, 2007 Opinion by Sharer, J.

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ZONING - LAND USE - CRITICAL AREAS COMMISSION - MODIFICATIONS TO CRITICAL AREAS GROWTH ALLOCATIONS

Facts: In an effort to alter critical areas growth allocations within Talbot County and the Towns of Easton, Oxford and St. Michaels, the Talbot County Commissioners enacted County Bill 933. Following a statutorily mandated review, a panel of the Critical Areas Commission recommended denial of the proposed modification because: (1) it would negate at least one previous Commission approval of a local program change and (2) it would create conflicts between the County program and several approved municipal programs, contrary to the Commission's oversight responsibility to insure consistent and uniform implementation.

The County filed suit in the Circuit Court for Talbot County seeking a declaratory judgment and writ of mandamus. The circuit court denied the County's relief, affirming the Commission's denial. The court rejected a preliminary challenge to the Commission's jurisdiction, based on timeliness of the Commission's actions, finding that the County did not establish that the Commission failed to undertake review of its proposed ordinance within the prescribed 90 day period. The court also agreed with the Commission that the County's proposal would interfere with established programs and that the County had demonstrated unwillingness to cooperate with the appellee towns in its proposal.

Held: Affirmed. The County produced no evidence as to when the Commission actually received the County's submission for approval and, therefore, the County failed to overcome the presumption that the Commission accepted and processed Bill 933 within the time proscribed by statute. The circuit court correctly determined, on a substantial record, that the Commission acted within appropriate parameters. The record supports the conclusion that approval of Bill 933 required a revocation of prior Commission action. The record further supports the court's conclusion that the Commission's disapproval of Bill 933 was necessary to ensure that local programs are implemented in a consistent and uniform manner, as required by statute.

Talbot County v. Town of Oxford, et al, No. 1509, Sept. Term 2006, filed November 30, 2007. Opinion filed by Sharer, J.

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ATTORNEY DISCIPLINE

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland effective November 30, 2007:

SOLOMON ZEWDIE BEKELE
*

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland effective November 30, 2007:

JEFFREY S. MARCALUS
*

By an Opinion and Order of the Court of Appeals of Maryland dated December 4, 2007, the following attorney has been indefinitely suspended from the further practice of law in this State:

VICTOR MBA-JONAS
*

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland effective December 5, 2007:

LESLIE BLISH HOLT
*

The following attorney has been replaced upon the register of attorneys in the Court of Appeals of Maryland effective December 5, 2007:

SHUAN HAIG MACAULAY ROSE
*

By an Opinion and Order of the Court of Appeals of Maryland dated December 10, 2007, the following attorney has been disbarred from the further practice of law in this State:

ARTHUR DIXON WEBSTER
*

JUDICIAL APPOINTMENTS

On December 4, 2007, the Governor announced the appointment of the **Hon. Joseph F. Murphy, Jr.** to the Court of Appeals of Maryland. Judge Murphy was sworn in on December 17, 2007 and fills the vacancy created by the retirement of the Hon. Alan Wilner.

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On December 3, 2007, the Governor announced the appointment of **Nicholas Elias Rattal** to the Circuit Court for Prince George's County. Judge Rattal was sworn in on December 20, 2007 and fills the vacancy created by the retirement of Hon. E. Allen Shepherd.

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On December 3, 2007, the Governor announced the appointment of **Broughton Miller Earnest** to the Circuit Court for Talbot County. Judge Earnest was sworn in on December 21, 2007 and fills the vacancy created by the Hon. Sydney S. Campen.